



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: David N. Carmany, City Manager

FROM: Jim Arndt, Public Works Director
Anna Luke, Senior Management Analyst

DATE: February 15, 2011

SUBJECT: Consideration to Select a Solid Waste Hauler and Optional Services and Approve Award of the Solid Waste Contract

RECOMMENDATION:

Staff recommends that the City Council:

1. Select a hauler and service level for service of the City's next solid waste contract.
2. Select Services to be included in the City's next solid waste contract, including Optional Services.
 - a. Door-to-Door Household Hazardous Waste (Residential).
 - b. Mixed Waste Processing to Recover Additional Recyclables (Commercial).
 - c. Residential & Commercial Food Waste Recycling (Athens & Crown only).
3. Direct Staff to return to Council with customer rates on March 1, 2011.

FISCAL IMPLICATION:

The City's current annual from the solid waste contract is \$3,152,000. Selecting a hauler has a fiscal impact on the rate the customers will be billed. The rate is a combination of the hauler's cost and the City Recovery Cost. The City Recovery Costs cover the costs of City Staff in the administration of solid waste billing, administering the contract, and all solid waste activities. The City Recovery Costs are added separately to the hauler's rates and will be included in final user rates covered in the Proposition 218 voting process.

Contractor Rate: Awarded hauler's rates

Customer Rate: Awarded hauler's rates + City Recovery Costs

Proposition 218 Vote Process & City Recovery Costs

In November 1996, California voters passed Proposition 218, the "Right to Vote on Taxes Act". This constitutional amendment protects taxpayers by limiting the methods by which local governments can create or increase taxes, fees and charges without taxpayer consent. Proposition 218 requires voter approval prior to imposition or increase of general taxes, assessments, and

certain user fees.

If the new user rates exceed the amount of the existing user rates, a “Proposition 218 vote” is required, which allows residents the opportunity to reject the proposed rates. The City Council contract award date is scheduled for February 15, 2011. Establishing of the rates will occur March 1, 2011 and the start of the 45-day Proposition 218 vote process will begin. City Council will consider results of the 218 process on May 3, 2011. The earliest start date the awarded hauler may begin service is June 1, 2011, and the city will utilize at least one (1) month of the optional Waste Management extension which requires an additional \$60,000 per month to existing costs.

BACKGROUND:

The solid waste contract is the City’s largest contract affecting all community members. Manhattan Beach and other communities in the South Bay region of Los Angeles County have been working collaboratively on coordinated plans for environmental sustainability; Recognizing the current status is not the problem; The larger problem is deciding on the city’s future direction and then implementing policies that support that vision.

The proposed contract is valued between \$22 – 27 million dollars over the seven year term, depending on which hauler and optional programs are selected. The new contract start date will be June 1, 2011. The successful proposer will collect refuse from the public streets, Strand, Pier and park cans, service the refuse and recycling carts and large bins for every business, apartment, townhome and condominium, and service the trash (gray), recycling (blue) and green waste (green) carts from all the single family homes in Manhattan Beach.

The City’s current solid waste contract with Waste Management will expire on April 30, 2011, with an optional six-month extension (at an additional \$60,000 per month) by the current hauler, Waste Management, to expire on October 31, 2011.

The City engaged in a thorough process to select its next solid waste hauler. Table 1 displays all Environmental Task Force, City Council, and Finance Subcommittee meeting dates directly related to the City’s next solid waste contract. *All 33 meetings were public and provided an opportunity for public comment:*

Table 1:
Public Meetings Related to the Next Solid Waste Contract

October 2008 (2 ETF meetings)	April 6, 2010 (City Council)
November 2008 (2 ETF meetings)	May 4, 2010 (City Council)
December 2008 (1 ETF meeting)	July 16, 2010 (City Council)
January 2009 (2 ETF meetings)	July 20, 2010 (City Council)
February 2009 (2 ETF meetings)	August 3, 2010 (City Council)
March 2009 (3 ETF meetings)	September 7, 2010 (City Council)
April 2009 (3 ETF meetings)	December 7, 2010 (Finance Subcommittee)
May 2010 (2 ETF meetings)	December 13, 2010 (Finance Subcommittee)
May 5, 2009 (City Council)	December 21, 2010 (City Council)
July 7, 2009 (City Council)	January 24, 2011 (Finance Subcommittee)
December 1, 2009 (City Council)	February 1, 2011 (City Council)
February 16, 2010 (City Council)	February 15, 2011 (City Council)

Environmental Task Force

In October 2008 City Council directed the City's Solid Waste and Recycling Subcommittee of the Environmental Task Force (ETF) to provide recommendations for additional services for the city's next contract. Subcommittee members included Manhattan Beach residents Suzanne Kretchmer, Wendy Phillips, and Andrea Zilslis; and Staff members Jim Arndt and Anna Luke. The Environmental Task Force provided recommendations for improvements to reduce landfill waste (increase diversion) for residential, commercial, and school communities at the May 5, 2009 City Council meeting. The City Council selected and approved all recommendations for further consideration during the process of selecting a hauler for the new contract. The May 5, 2009 City Council meeting Staff Report (Attachment F), includes the Environmental Task Force subcommittee's original recommendations. *Pages 2 through 6 in Attachment H (September 7, 2010 Staff Report) summarize the new contract changes, footnoting the Environmental Task Force recommendations.* The award of contract and selection of optional services will also complete the solid waste contract project of the Environmental Task Force Solid Waste and Recycling Subcommittee.

Renegotiation with Waste Management

At its July 7, 2009 meeting, City Council directed Staff to enter renegotiation of a new contract with the City's current hauler, Waste Management with the proviso that at the completion of the renegotiation, City Council could elect to proceed with the Request for Proposal process. At the same meeting City Council hired HF&H Consultants, LLC to assist the City with the renegotiation process. Ultimately on April 6, 2010, City Council declined the renegotiated contract and directed Staff to pursue the Request for Proposal process.

Tiered-Rate Structure & Hauler Diversion

A tiered-rate structure, or "Pay as you Throw," was one of the primary residential services recommendations of the Environmental Task Force. Residents will no longer be charged a "flat fee" for their trash, but will now be charged by the size of their gray trash cart(s). Recycling and green waste service are still free. At that meeting the City Council also determined a hauler-diversion rate of "a minimum of 44%" to be required in the contract with liquidated damages for non-compliance.

Request for Proposal Process

On September 7, 2010, the City Council approved the Solid Waste Request for Proposal (RFP) and draft Franchise Agreement for public release after including a "Commitment to Environmental Sustainability" section and contract exhibit, and additional sustainable language throughout the Proposal. The Request for Proposal package was released on September 9, 2010, with all proposals due October 29, 2010. From September 9, 2010 – October 29, 2010, interested haulers prepared RFP packages which included costs for required and optional services. City Staff and HF&H Consultants, LLC conducted a "Pre-Proposal Conference" on September 20, 2010, which provided an opportunity for interested haulers to review the RFP package and clarify all aspects of the RFP. On the same day, Staff conducted a "hauler tour" through the cities' various areas (including the Tree Section, Hill Section, Sand Section, Downtown, North Manhattan, East Manhattan), as well as key challenging locations for collection. Eleven (11) haulers and two (2) refuse cart manufacturing companies attended the Pre-Proposal Conference, and several of the haulers attended the tour. Shortly after, HF&H prepared a "Questions & Answers" document summarizing questions asked

by haulers between September 7 – 24, 2010, distributing it to interested haulers. The bid package, addendum, and questions and answer document were posted on the city's "Bid Opportunities" section of its website.

On October 29, 2010, the City received a total of five (5) responses: four (4) complete bid packages and one (1) no-bid letter from Toter Inc., a refuse cart company. The four (4) proposers were (in alphabetical order) Athens Services, Crown Disposal, Waste Management, and Waste Resources.

Waste Resources' rates were significantly higher than the other proposers, and the Finance Subcommittee at the December 7, 2010 Subcommittee meeting eliminated Waste Resources from further consideration. The Finance Subcommittee reviewed the three remaining proposals at the same meeting and participated in the hauler interviews on December 13, 2010. At the conclusion of the hauler interviews, the Finance Subcommittee directed Staff to request a "Best and Final" offer and pursue final draft contract development with the three (3) remaining proposers: Athens Services, Crown Disposal and Waste Management. The information provided at the December 7th meeting was included on the December 21, 2010 City Council Agenda.

The Finance Subcommittee reviewed Staff recommendations and discussed the "Best and Final" information at its January 24, 2011 meeting. This meeting marked the end of hauler-initiated proposal changes. Council asked Staff to include the Subcommittee Staff Report and attachments on the February 1, 2011 City Council meeting agenda, and to provide all interested Council members the opportunity to tour each proposers facilities before the February 15, 2011 meeting. They asked Staff to provide the following for the February 15, 2011 Staff Report:

1. Final hauler-signed contracts for City Council consideration;
2. Provide a sensitivity analysis of disposal cost fluctuation;
3. Percentage (%) of estimated residential users for 32, 64, and 96 gallon single-family residential users;
4. Percentage (%) of estimated commercial users for (1) commercial can, (1) 2 yard bin 1x per week, and (1) 3 yard bin 1x per week;
5. Encourage public attendance at the February 15, 2011 City Council meeting.

DISCUSSION:

Responses to requested information are as follows:

1. Final hauler-signed contracts for City Council are included in this Staff Report as Attachments C, D, and E for City Council consideration.
2. Page 17 of Attachment A includes the sensitivity of disposal cost fluctuation.
3. Table 4 of this report includes the percentage (%) of estimated residential users for 32, 64, and 96 gallon single-family residential users.
4. Table 5 of this report includes percentage (%) of estimated commercial users for (1) commercial can, (1) 2 yard bin 1x per week, and (1) 2 yard bin 2x per week (most common estimated bin user).
5. Notifications were placed in the Beach Reporter, Easy Reader, Patch.com, and the City's website inviting the community to provide public comment regarding the award of the solid waste contract at the February 15, 2011 City Council meeting.

Optional Services

The City's Request for Proposal (RFP) included required programs as well as optional services which have been identified as benefits to the community. The optional services as defined in subsequent Tables 2 through 8 include the following:

- Residential
 - Door-to-Door Household Hazardous Waste Pick-Up
 - Residential Food Waste Recycling (Athens and Crown only)
- Commercial
 - Additional Mixed Waste Processing
 - Commercial Food Waste Recycling (Athens and Crown only)

Specific details on the optional services may be found in Attachment B.

Proposal Data

Proposal data is grouped in the areas of Diversion and Cost.

Diversion

The City’s primary solid waste goal is to reduce material disposed at the landfill. Anytime the hauler recycles material, they are “diverting” it from landfill disposal. The City’s current hauler diversion rate is 38%. The RFP requires a minimum of 44% hauler diversion. Table 2 below demonstrates that all haulers have proposed to exceed the City’s required hauler diversion rate.

Table 2
FIRST YEAR HAULER DIVERSION RATES WITH and WITHOUT OPTIONAL SERVICES

Proposer	Initial Proposal	Final Proposal	Increase
WITH Optional Services			
Athens – Including Food Waste	55%	55%	--
Crown – Including Food Waste	65%	70%	5%
WMLA – New or Used Carts	n/a*	57%**	n/a
WITHOUT Optional Services			
Athens	50%	50%	--
Crown – Including Food Waste	65%	70%	5%
WMLA – New or Used Carts	45%***	50%***	5%

* Initial WMLA diversion rate including optional processing was not provided.

** WMLA proposed to phase-in higher diversion rates over contract term, increasing to 62% by end of contract term.

***WMLA proposed to phase-in higher diversion rates over contract term. Guaranteed diversion rate at end of term under both initial and final offers is 55%.

Cost

The following tables include information provided by each proposer. All tables are listed in alphabetical order by hauler name: Athens, Crown, and Waste Management. A complete chart of costs is provided in Attachment A, on pages “3-1,” “3-2,” and “3-5.” (Summary of Hauler Proposals).

- Table 3: Seven Year Revenue With Optional Services
- Table 4: Monthly Residential Rates With Optional Services
- Table 5: Sample Monthly Commercial Rates With Optional Services
- Table 6: Seven Year Revenue Without Optional Services
- Table 7: Monthly Residential Rates Without Optional Services
- Table 8: Sample Monthly Commercial Rates Without Optional Services

Table 3
SEVEN YEAR REVENUE WITH OPTIONAL SERVICES

Proposal	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	\$ 23,400,000	---
Crown	\$ 23,800,000	1.7%
WMLA – Used Carts*	\$ 27,100,000	15.8%
WMLA	\$ 28,200,000	20.5%

* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 4
MONTHLY RESIDENTIAL RATES WITH OPTIONAL SERVICES
(First Year)

Proposer	Refuse Cart Size* (sorted low to high)		
	32-Gallon (est. 10% of users)	64-Gallon (est. 86% of users)	96-Gallon (est. 4% of users)
Athens	\$ 7.12	\$ 11.12	\$ 15.12
Crown **	\$ 7.10	\$ 11.10	\$ 15.10
WMLA – Used Carts***	\$ 8.65	\$ 12.65	\$ 16.65
WMLA – New Carts	\$ 9.51	\$ 13.47	\$ 17.47
Current Rate (no optional services)	\$12.02 – unlimited service		

* Includes optional service (HHW). Does not include City Recovery Costs.

** The residential & commercial food waste programs are part of Crown's base proposal to reach 70% diversion.

*** RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 5
SAMPLE MONTHLY COMMERCIAL RATES WITH OPTIONAL SERVICES
(First Year)*

Rate Category	Customer Count**	Current***	Athens Food Waste	Crown Food Waste	WMLA Existing Carts	WMLA New Carts
Multi-family cart/unit	2,931	\$11.42	\$11.12	\$11.10	\$11.49	\$12.25
Commercial can-1x/wk (est. 83% of can users)	129	\$13.15	\$13.00	\$20.00	\$13.86	\$13.86
Bin – 2 yd. 1x/wk (est. 18% bin users)	88	\$66.73	\$55.29	\$72.00	\$78.51	\$78.51
Bin – 2 yd. 2x/wk (est. 13% of bin users)	63	\$100.10	\$104.83	\$105.11	\$122.69	\$122.69

* Does not include City Recovery Costs.

** Number of billing units utilizing this service, based on 2010 data.

*** Does not include optional services.

Table 6
SEVEN YEAR REVENUE WITHOUT OPTIONAL SERVICES

Proposal	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	\$ 22,300,000	--
Crown	\$ 23,000,000	3.1%
WMLA/Used Carts*	\$ 25,300,000	13.4%
WMLA/New Carts	\$ 26,300,000	17.9%

* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 7
MONTHLY RESIDENTIAL RATES WITHOUT OPTIONAL SERVICES
(First Year)

Proposer	Refuse Cart Size* (sorted low to high)		
	32-Gallon (est. 10% of users)	64-Gallon (est. 86% of users)	96-Gallon (est. 4% of users)
Athens	\$ 6.18	\$ 10.18	\$ 14.18
Crown**	\$ 6.55	\$ 10.55	\$ 14.55
WMLA – Used Carts***	\$ 8.25	\$ 12.25	\$ 16.25
WMLA – New Carts	\$ 9.11	\$ 13.11	\$ 17.11
WMLA Previously Negotiated for 07/01/201	\$ 11.91	\$ 13.61	\$ 15.44
Current Rate	\$12.02 – flat rate, unlimited service		

* Excluding optional services. Does not include City Recovery Costs.

** The residential & commercial food waste programs are part of Crown’s base proposal to reach 70% diversion.

*** RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 8
SAMPLE MONTHLY COMMERCIAL RATES WITHOUT OPTIONAL SERVICES
(First Year)*

Rate Category	Customer Count**	Current***	Athens	Crown Food Waste	WMLA Existing Carts	WMLA New Carts
Multi-family cart/unit	2,931	\$11.42	\$10.18	\$11.10	\$11.09	\$11.85
Commercial can-1x/wk (est. 83% of can users)	129	\$13.15	\$12.33	\$20.00	\$13.86	\$13.86
Bin – 2 yd. 1x/wk (est. 18% bin users)	88	\$66.73	\$52.46	\$72.00	\$67.68	\$67.68
Bin – 2 yd. 2x/wk (est. 13% of bin users)	63	\$100.10	\$99.46	\$105.11	\$105.77	\$105.77

* Does not include City Recovery Costs.

** Number of billing units utilizing this service, based on 2010 data.

*** Does not include optional services.

Hauler Analysis

The following tables include information provided by each proposer. All tables are listed in alphabetical order by hauler name: Athens, Crown, and Waste Management. HF&H states that...“Crown, Athens, & Waste Management are qualified to provide solid waste services to the City of Manhattan Beach...” *A complete analysis provided by HF&H Consultants, LLC may be found in Attachment A (Summary of Hauler Proposals).*

- Table 9: Routes, Route Collection Vehicles & Carts Proposed
- Table 10: Number of Legal Disclosures
- Table 11: Percentage of Manhattan Beach Contract as Company Revenue
- Table 12: Reference Check Ratings
- Table 13: Municipal Transitions
- Table 14: Public Outreach Hours (Multi-Family, Commercial, Schools)

The Hauler Analysis includes Equipment, Legal Analysis, Financial Ability, Customer Satisfaction, Municipal Transitions, and Public Outreach Hours.

Equipment

Per the RFP, collection vehicles are required to use alternative fuel and to be no more than 10 years old at any time during the contract term. The contractor is contractually required to provide sufficient vehicles, including backup vehicles, to meet the City’s needs.

Table 9
ROUTES, ROUTE COLLECTION VEHICLES & CARTS PROPOSED

Proposer	Model Year	Fuel Type	Route Hours*	MB Vehicle Inventory	Carts	Cart Manufacturer
Athens	2010	CNG	627	On order	New	Rehrig
Crown	2010	CNG or LNG	515	In Stock	New	Rehrig
WMLA	2003	LNG	531	Existing	New or Used	Rehrig

* Net of roll-off box collection routes.

Legal Analysis

The RFP required the proposers to describe certain legal actions meeting the disclosure requirements that occurred in the past ten years against the entity submitting the proposal, its key personnel, or affiliated companies in the State of California. Specific information on the legal disclosures may be found in Attachment A on pages 11 through 12 and page “4-13.”

Table 10
NUMBER OF LEGAL DISCLOSURES

Proposer	# of Legal Disclosures
Athens	6
Crown	1
WMLA	5

Financial Ability

Table 11
 PERCENTAGE OF MANHATTAN BEACH CONTRACT AS COMPANY REVENUE

Proposer	Manhattan Beach Rate Revenue as % of Company Revenue
Athens	2%
Crown*	8%
WMLA	<1%

*Calculation does not include revenue from sister company Community Recycling and Resource Recovery reported as \$50 million/year.

Customer Satisfaction

Table 12
 REFERENCE CHECK RATINGS

Proposer	# of References	Ratings by Municipal References*
Athens	13	4.2
Crown	5	4.2
WMLA	14	4.0

* 1 = Unsatisfactory, 2 = Below Expectations, 3 = Satisfactory, 4 = Above Expectations, 5 = Exceptional Performance

Municipal Transitions

Table 13
 MUNICIPAL TRANSITIONS

Proposer	Most Recent Municipal Transition
Athens	2004 (City of West Hollywood)
Crown	2002 (City of San Fernando)
WMLA	2005 (City of Rolling Hills Estates)

All three proposers confirmed that they would be ready to begin service on June 1, 2011.

Public Outreach Hours

The current contract requires a hauler-liaison for public outreach, and material outreach efforts (ads, bill inserts, brochures, etc.) for residential, commercial, and construction & demolition. The ETF recommended greater outreach for multi-family, commercial and school sectors to increase diversion. The new contract required haulers to provide an annual minimum number of hours each would dedicate to public outreach for the multi-family, commercial, and school sectors *in addition to* residential public outreach.

Table 14
 ANNUAL MINIMUM PUBLIC HOURS (in addition to residential outreach)

Proposer	Multi-Family	Commercial	Schools	Total**
Athens	150	350	500	1000
Crown*	865	300	270	1435
WMLA	400	600	500	1500

* 865 the first year, 220 each subsequent year.

** 1,435 the first year, 790 thereafter

CONCLUSION:

Benefits of Each Hauler Proposal

All three finalists reduced their rates through the “best and final” opportunity. Each hauler was required to submit cost and program information relating to all RFP requirements. In addition, haulers submitted “unique features” which enhance their proposal and sets them apart from other bidding haulers. A complete list of the “unique proposal features” may be found on pages “4-14” and “4-15” in Attachment A. Tables 15 through 17 represent a partial list of benefits of each hauler, including some of their “unique proposal features.”

Table 15
Athens Services – Incorporated in 1958

Lowest seven year revenue (with and without Optional Services).
Includes mixed waste processing of all commercial bin waste at no additional charge.
Provided pricing for full residential and commercial food waste recycling program through contract term.
Full-time outreach staff member dedicated solely to the City of Manhattan Beach.
Full-time route manager dedicated solely to the City of Manhattan Beach.
Annual disposal rate increases capped at 5% or CPI (Consumer Price Index), whichever is lowest.
Offer to negotiate with City to provide street sweeping services.
If service date is delayed beyond June 1, 2011, Athens will pay \$60,000 WM charge for July – October
In-City transition office open March 2011 through June 2012.
Owns Construction and Demolition Debris recycling facility (American Waste Industries).
Did not take any exceptions to the RFP (did not try to make any changes to City requirements).
Providing new, 2010 collection vehicles.
Quarterly waste characterization studies, exceeding the RFP requirement of 1 every 2 years.

Table 16
Crown Disposal – Incorporated in 1968

Offers highest diversion rate with and without Optional Services.
First year rate freeze (waive July 1, 2012 rate adjustment).
Lowest residential rates (with Optional Services).
Includes residential and commercial food waste through contract term as standard programs at no additional charge.
Includes mixed waste processing of all residential and commercial waste at no additional charge.
Most food waste recycling experience of all proposers; largest food waste recycler in Southern California.
Providing new, 2010 collection vehicles.
Sister company owns Construction and Demolition Debris recycling facility (Community Recycling).
Owns farmland in the Central Valley which utilizes compost from community food waste programs.
One in a family of California companies including Community Recycling, Dinuba Energy and Madera Power.
Did not take any exceptions to the RFP (did not try to make any changes to City requirements).
Annual waste characterization studies, exceeding the RFP requirement of 1 every 2 years.
Compost giveaway to residents and school district gardens.

Table 17
Waste Management Inc. – Incorporated in 1987

Known entity; WM or company predecessor serviced City of Manhattan Beach for over 25 years.
Minimal transition issues.
Largest solid waste hauling company in North America.
Largest number of franchise agreements.
Offer a 5% residential rate reduction for continued use of existing carts.
Reduce the \$60,000 per month extension cost to \$15,000 per month.
Possess largest financial resources to mitigate future unexpected financial impacts.
Owns landfills; no risk for landfill disposal capacity issues.
Annual disposal rate increases capped at 5% or CPI (Consumer Price Index), whichever is lowest.
Owns a Construction and Demolition Debris recycling facility (Downtown Diversion).
Reuse programs including textile recycling.
Grant assistance including seeking, writing, managing and reporting of future grant funds.
Offer “Bagsters” as an alternative to temporary bins.

Next Steps

Many tasks need to be completed in order to meet a deadline of June 1, 2011. If any tasks are delayed, the City may need to utilize additional extension months with Waste Management to maintain service to all customers until the new contract begins. The following schedule includes dates to execute each task for a June 1, 2011 start date:

Table 18
Transition Timeline

Date	Activity
February 15, 2011	City Council meeting – Select hauler and Optional Services.
March 1, 2011	City Council meeting – Establish rates, Proposition 218 process begins.
March 4, 2011	Proposition 218 Notices mailed to residents.
March 10, 2011	Hauler mails cart size selection cards to residents.
March 17, 2011 (7:00 p.m.)	Proposition 218 public meeting #1 (PD/FD Training Room).
March 30, 2011 (7:00 p.m.)	Proposition 218 public meeting #2 (CC Chambers).
March 10 – April 11, 2011	Residents return cart size selection cards to hauler.
April 13, 2011	Last day for hauler to provide City billing department with cart selection information received.
May 1, 2011	Hauler mails residents final 30 day reminder of new services start date.
May 1 – May 31, 2011`	(If applicable) Hauler removes old carts & delivers new carts to customers.
May 3, 2011	City Council meeting – Consider rates, complete Proposition 218 process.
June 1, 2011	Start of Service.

- Attachments:
- (A) Summary of Hauler Proposals (HF&H)
 - (B) Summary of Optional Services (City)
 - (C) Athens: Hauler-Signed Final Draft Contract (HF&H)
 - (D) Crown: Hauler-Signed Final Draft Contract (HF&H)
 - (E) Waste Management: Hauler-Signed Final Draft Contract (HF&H)
 - (F) May 5, 2009 Staff Report (ETF Recommendations)
 - (G) April 6, 2010 Staff Report (Reject WM Negotiation, Begin RFP Process)
 - (H) September 7, 2010 Staff Report (Approve RFP Package for Public Release)
 - (I) February 1, 2011 Staff Report (Finance Subcommittee Best and Final Review)

cc: Laith Ezzet, HF&H Consultants, LLC
Bruce Moe, City of Manhattan Beach Finance Director



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February 8, 2011

Mr. Jim Arndt
Director of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, California 90266

CITY OF MANHATTAN BEACH
Summary of Solid Waste Services Proposals
"Best and Final Offers"

Dear Mr. Arndt:

Attached please find our report summarizing the solid waste services proposals for the City of Manhattan Beach, based upon the best and final offers negotiated with each proposer.

Please call me at (949) 251-8902 if you have any questions.

Very truly yours,

A handwritten signature in black ink that reads 'Laith Ezzet'.

Laith Ezzet, CMC
Senior Vice President

Enclosure - As stated

CITY OF MANHATTAN BEACH

REVIEW OF SOLID WASTE SERVICES PROPOSALS

This memorandum summarizes the results of the solid waste proposal review performed by HF&H Consultants, LLC ("HF&H") for the City of Manhattan Beach ("City").

BACKGROUND AND PROCESS

The City of Manhattan Beach released on September 9, 2010 a Request for Proposals for Solid Waste Handling Services ("RFP"). On October 29, 2010, the City received five responses, including four proposals and one "no bid" letter from a cart manufacturer. HF&H performed a preliminary review of the proposals and prepared a summary of each proposal. Written questions clarifying the proposals were sent to each proposer on November 16, 2010, and each proposer was provided an opportunity to review and comment on the accuracy of the written proposal summary we prepared.

The City of Manhattan Beach's Finance Subcommittee met on December 7, 2010 in a public meeting to discuss a staff report and preliminary evaluation report of the four proposals, and viewed presentations by City staff and HF&H. The Finance Subcommittee subsequently interviewed Athens, Crown and WMLA. Waste Resources was not selected for an interview due to its high cost proposal, which was 40% above the next highest proposal based upon estimated 7-year rate revenues. Interviews were conducted on December 13, 2010.

On December 21, 2010, the City Council instructed City staff to complete draft agreements with Athens, Crown and WMLA. At the City's direction, on December 22, 2010, proposers were provided the opportunity to submit best and final offers, due December 28, 2010. After submittals were received and clarified, each proposer was sent a draft contract for review on January 7, 2011.

Contracts signed by the proposers accepting the final negotiated terms were received from each hauler January 20, 2011. These drafts were attached to the staff report submitted to the Finance Subcommittee for its January 24, 2011 meeting. At the City's direction, Athens, Crown and WMLA were sent the supporting calculations and assumptions used for the seven-year rate revenue projections on January 25, 2011. One proposer, Athens, sent a response.

PROPOSALS REVIEWED

HF&H reviewed proposals submitted by the following companies:

- Athens Services (“Athens”), a privately-held company with significant operations in Los Angeles County.
- Crown Disposal Inc. (“Crown”), a privately-held company with operations in Los Angeles County.
- USA Waste of California, Inc. dba Waste Management of Los Angeles (“WMLA”), a wholly-owned subsidiary of Waste Management, Inc., the largest solid waste hauling company in North America.
- Waste Resources, Inc. (“WRI”), a privately-held company with operations in Los Angeles County.

A summary of key evaluation metrics is provided in Attachment 1. A further summary of the evaluated proposals is contained in Attachment 2.

KEY TERMS OF THE RFP

The term of the agreement is seven years, with a City option to extend up to two additional years. Residential cart and bin, commercial collection and non-construction temporary bin and non-construction permanent roll-off box services are within the scope of the agreement. Temporary roll-off box and all construction debris collection services are not exclusive to the agreement. A summary of the key services and contract terms requested by the City in its RFP is provided in Attachment 5.

The City’s RFP included the draft franchise agreement that the successful proposer would be expected to execute. The agreement identifies in significant detail the various solid waste collection and recycling services to be provided. The scope of services contained in the agreements is comprehensive, specific, and tailored to meet the needs of the customers within the City of Manhattan Beach. Therefore, unless significant exceptions were proposed or significant enhancements added to the City’s desired terms, all of the proposals would offer similar services.

DETAILED PROPOSAL MATRIX

In order to compare the proposals, we prepared a matrix (Attachment 4) that summarizes the following information obtained from the proposals:

1. “Proposer Overview,” including the company’s corporate headquarters, guaranteeing entity, if any, and contract revenue as a percentage of total company revenues.

2. "Experience," including a summary of each proposer's experience in other jurisdictions.
3. "Facilities," describing the proposed operating and transfer facilities, disposal site, and food waste, recycling, processing, C&D and green waste facilities.
4. "Equipment," describing proposed:
 - Collection vehicles
 - Residential carts
 - Vehicle tracking system to be used on collection vehicles
 - Desk side recycling containers to be provided at cost to businesses
 - Whether proposer can offer split (refuse/recycling) bins
5. "Optional Services" to be implemented at City's option for an additional fee:
 - Door-to-door household hazardous waste ("HHW") collection service
 - Processing an increased quantity of bin refuse to recover a total of 3,549 tons per year (recovery of 1,365 tons per year is already required)
6. "Additional Information Requested in the RFP," describing:
 - Proposed method of adjusting disposal costs
 - Limitations on future rate increases, if available
 - Capacity guarantees
 - Hours to be devoted to public outreach for the multi-family, business and school district sectors
 - Additional recycling and take-back program support offered
7. "Proposer Exceptions to Franchise Agreement." Proposers were required to identify any terms in the City's franchise agreement that proposers desired to negotiate.
8. "Legal Disclosures," indicating any legal issues that the RFP required the proposer to disclose.
9. "Unique Proposal Features," identifying proposed terms that exceed the minimum requirements of the RFP. Because the City's RFP and contract documents are comprehensive and require all of the contractors to offer a complete set of very specific services, most of the proposed services of a significant nature are standard.

Experience

All proposers have provided both residential automated cart and bin collection services in the Los Angeles area. Proposer experience is summarized starting on page 4-1 of Attachment 4.

Company Revenues

The proposed Manhattan Beach annual rate revenues of each company as a percentage of total company revenues are shown in the table below.

Proposer	Manhattan Beach Rate Revenue as % of Company Revenue
WMLA	<1%
Athens	2%
Crown	7%
WRI	36%

Waste Diversion

The current hauler in the City of Manhattan Beach reported diverting an average diversion rate of 38% of the waste collected in 2007, 2008 and 2009. The RFP required proposers to offer a diversion rate no lower than 44% of the waste collected under this agreement.

Two proposers, Crown and WMLA, increased their guaranteed minimum diversion rates during the “best and final” process. See Attachment 12 for a summary of proposers supporting diversion plans.

Guaranteed Minimum Hauler Diversion Rates

Proposer	Initial Proposal	Final Proposal	Increase
Including Optional Services			
Athens – Including Food Waste	55%	55%	--
Crown – Including Food Waste	65%	70%	5%
WMLA – Existing or New Carts	n/a(1)	57%(2)	n/a
Excluding Optional Services			
Athens	50%	50%	--
Crown – Including Food Waste	65%	70%	5%
WMLA – Existing or New Carts	45%(3)	50%(3)	5%
WRI	44%	n/a	n/a

(1) Initial WMLA diversion rate including optional processing was not provided.

(2) WMLA proposed to phase-in higher diversion rates over contract term, increasing to 62% by end of contract term.

(3) WMLA proposed to phase-in higher diversion rates over contract term. Guaranteed diversion rate at end of term under both initial and final offers is 55%.

Crown’s proposed diversion rate exceeded the other proposed rates. Crown’s higher diversion rate is due primarily to the following programs included in Crown’s proposal at no additional cost to the ratepayers:

1. Residential Food Waste Collection – Crown proposed to collect and process food waste placed in residential green waste carts as a permanent program, versus a six-month pilot program as required in the RFP. [Athens proposed this as an optional service at an additional cost.]

2. Restaurant Food Waste Collection – Crown proposed a commercial food waste program as a permanent program, instead of a six-month pilot program as required in the RFP. [Athens proposed this as an optional service at an additional cost.]

3. Mixed Waste Processing of All Residential Refuse – Crown proposed to process all refuse placed in residential refuse carts to recover recyclables prior to landfilling.

4. Mixed Waste Processing of all Bin Waste – The contract included in the RFP requires the processing of a portion of the bin refuse, and requested a cost for the processing additional bin refuse. Crown proposed to process 100% of bin refuse prior to landfilling to recover recyclables at no additional cost. [Athens also proposed this option at no additional cost.]

Food Waste Diversion Programs

The draft franchise agreement requires that a six-month pilot restaurant and residential food waste programs be implemented for a limited number of customers no later than July 1, 2012. Permanent food waste programs would then be negotiated between the City and the franchisee.

1. Crown - Crown offered to implement permanent, City-wide restaurant and residential food waste programs within four months of the start of service at no additional cost as part of its base proposal.
2. Athens - Athens proposed to implement permanent restaurant and residential food waste programs at the start of service for an additional cost. Two separate rate proposals were provided, with and without this service.
3. WMLA - WMLA offered to complete the pilot programs early, in August 2011, and then negotiate costs to City to implement permanent, City-wide programs in September 2011.

Residential Food Waste Collection Method

Athens' and Crown's permanent residential food waste programs and WMLA's pilot residential program include the co-collection of food waste with residential green waste.

Restaurant Food Waste Collection Method

Crown proposes a restaurant food waste diversion program that offers a combination of approaches depending upon the customer: source-separated food waste collection in separate containers, co-collection with refuse and/or collection using split bins for space constrained customers. Food waste collected with refuse would be reverse sorted to remove non-compostables, with the remainder sent for composting.

Athens restaurant food waste diversion programs includes the distribution of green bags to participants for source separation of food waste. These customers would place these bags in the refuse container for removal during processing of the refuse. Loads that are rich in compostables would also be reverse sorted for the removal of non-compostables, with the remainder send for composting.

WMLA proposed a source separated restaurant pilot program, whereby participants have a separate cart for food waste, which they would wheel to the collection point when full.

Status of Crown's Food Waste Processing Facility

Crown has proposed to deliver food waste to its sister company Community Recycling and Resource Recovery's (CRRR) Sun Valley facility. CRRR owns and operates a composting facility in Kern County to which it continues to deliver commercial food waste generated within the County of Los Angeles. Kern County Planning and Community Development Department issued a letter dated October 4, 2010 to CRRR to clarify which materials may be taken to the Kern County facility to include "institutional food waste as an authorized use under the existing CUP" and updated the list of acceptable items to specify "wholesale/retail food process materials." (See Attachment 8)

CRRR's permit for its Kern County facility does not specifically permit the processing of residential food waste co-collected with green waste, although co-collected residential food and green waste has been delivered from both Kern County and Los Angeles County collection programs in the past. Recently, Kern County Planning and Community Development Department instructed CRRR to suspend the delivery of residential food waste to this facility from Los Angeles County, pending the outcome of an Environmental Impact Report (EIR) requested by the County. Kern County does not plan to consider amend CRRR's permit to include residential food waste until CRRR has completed the EIR. (See Attachment 9)

CRRR currently sorts residential food waste from green waste and processes the food waste in a digester at its Sun Valley location for co-collected food and green waste collected by Crown from the City of San Fernando. This is the processing method to be used for the residential food waste program in Manhattan Beach unless and until the Kern County permit is amended.

Crown projected that the residential food waste program would divert 221 tons per year, or less than 1% of the total waste collected.

Exceptions to the Franchise Agreement

Athens, Crown and WRI did not take any exceptions to the proposed agreement. Waste Management requested six exceptions in the initial proposal and additional contract revisions during negotiations. Four of the requests were considered minor and accepted by the City. WMLA's initial exceptions are described in Attachment 4, and in Section 4 of WMLA's proposal.

Disposal Guarantees

The Puente Hills Landfill in Los Angeles County will close during the term of the new contract. This may impact regional disposal capacity and costs. Disposal guarantees offered by proposers are summarized in Attachment 4 and include:

- Athens offered a guarantee for up to 19,500 tons per year of Manhattan Beach residue for the seven-year term of the agreement at Chiquita Landfill located in Castaic.
- Crown guaranteed capacity at Community Recycling's Sun Valley transfer station, MRF, organics facility, C&D and Lamont composting facility (Crown and Community Recycling have the same owner).
- WMLA guarantees capacity at El Sobrante Landfill, Carson Transfer Station, Sun Valley Recycling Park (green waste), Downtown Diversion (C&D), and for food waste using its Reclaimable Anaerobic Composter.
- WRI did not offer guaranteed capacity, but owns the transfer station it proposes to use.

Disposal Component Adjustment and Rate Caps

The draft agreement in the RFP provided for an annual rate adjustment, based upon a specific formula that reflects changes in the following five cost components: fuel, labor, equipment, disposal and other costs. Changes in costs for all components, except for disposal, are based upon published price indices or cost factors. The Puente Hills Landfill is the largest landfill in the region and accepts a significant amount of the region's refuse and green waste. The Puente Hills Landfill is scheduled to close in 2013, at which time a portion of the waste accepted will be rail-hauled to Imperial County, and green waste will no longer be accepted. This may affect green waste disposal rates even more significantly than refuse disposal rates in the region. The RFP permitted proposers to propose rate increase methods for the disposal costs, which may be based upon the actual change in disposal costs.

Rate caps and disposal cost adjustments offered by the proposers include:

- Athens offered that disposal and green waste processing cost components be adjusted by the change in the Consumer Price Index for All Urban Consumers (CUURA421SA0), Los Angeles-Riverside-Orange County, CA, all items (local CPI) or 5%, whichever is lower. Should such CPI change exceed 5% per year, any excess will be rolled forward to next year. Proposes a one-time 5.5% increase to residential

rates to deliver and process green waste to another location upon closure of the Puente Hills Landfill.

- Crown offered to waive the first annual rate adjustment for all rate components. Thereafter, processing costs at transfer stations and Sun Valley processing facilities, including green waste costs, will be adjusted by CPI. The cost component for the disposal of processing residue will be adjusted based on the actual change in disposal costs at landfills used by Crown, capped at the dollar change in the tipping fee at the Puente Hills Landfill (Puente Hills MRF rate following the closure of the landfill).
- WMLA proposed that disposal and green waste costs be adjusted based upon the change in CPI for all urban consumers, all items less food and energy index (US city average). This is the default adjustment factor in the agreement.
- WRI proposed that disposal costs adjust based upon the change in the average gate fee at the Puente Hills Landfill, California Waste Services and WRI's Waste Resources Recovery facility.

Start Date

The RFP provided proposers with the opportunity to propose a start date. The existing agreement was scheduled to expire April 30, 2011. The City has negotiated an extension with WMLA for up to an additional six months at an additional cost of \$60,000 per month. Initially proposed start dates varied.

As part of the best and final negotiations process, proposers were asked to confirm a service start date based upon an assumed February 15, 2011 contract award. Due to the City's Proposition 218 process, proposers were instructed that the earliest permissible start date was June 1, 2011. This was also the earliest start date previously proposed. All three finalists confirmed that they would be ready to begin service on June 1, 2011.

The City begins paying WMLA an additional \$60,000 per month under the existing, extended contract beginning May 1, 2011 and continuing until start of service under the new agreement. WMLA proposed to lower this monthly cost to \$15,000 if selected. If selected, Athens proposed to reimburse the City for any extension costs paid after June 1, 2011 if the award of the contract is delayed sufficiently to prevent a June 1, 2011 start date.

Athens was recently awarded the Redondo Beach contract and will transition that city from its current hauler on July 1, 2011. If Athens is also selected in Manhattan Beach, the transition may be more challenging since both contracts begin within a one-month period. Athens states that it has the resources to transition both cities.

Unique Proposal Features

Proposers were permitted to include contract enhancements over and above RFP and contract requirements. Proposers included additional offers during best and final negotiations. These are summarized beginning on page 4-14. Additional recycling and take-back program enhancements are listed on page 4-11. Among the unique proposal features:

A. Athens offers:

1. Free compost give-a-way;
2. Processing of all bin refuse to recover recyclables at no additional charge;
3. Outreach staff member dedicated full-time to the City of Manhattan Beach; and,
4. An in-City transition office to be open March 2011 to June 2012.

The following offers were submitted by Athens as well, but were not incorporated into the agreement by the City. Athens was informed that the following two items would be excluded and Athens further reduced rates to reflect this.

1. Charitable Funding – Athens proposed a lump-sum payment of \$250,000, or an annual payment option, for community funding to be distributed for Manhattan Beach community needs by a joint Manhattan Beach/Redondo Beach/Athens committee to be formed by Athens. (Separate funding would have been provided for Redondo Beach.) This funding was determined by the City’s attorney to be charitable funding not permissible through the solid waste agreement.
2. Payment for Contract Extension – Athens proposed paying a fee of \$50,000 for each additional year the City would extend the contract term beyond nine years (beyond the initial seven-year term, plus two year extension at City’s option). Language was not agreed upon for this option.

B. Crown offers:

1. To implement both residential and commercial food waste collection programs at no additional charge;
2. To process all cart and bin refuse to recover recyclables at no additional charge; and,
3. To waive the first regularly scheduled rate adjustment.

C. WMLA offers:

1. Community re-use/recycling programs including a synthetic carpet diversion pilot program and a free paper shredding event.

The City attorney determined that WMLA’s offer in its initial proposal to provide \$25,000 per year in funding for the Manhattan Beach Educational Foundation through the solid waste collection agreement would not be permissible. WMLA was informed of this and it was not included in the agreement. WMLA currently provides solid waste collection service to the Manhattan Beach Unified School District under a separate contract. WMLA may continue providing school-related funding and outreach services under the separate school district service arrangement.

WMLA is the current contact hauler for the Manhattan Beach Unified School District and provides education and outreach services to the schools. Under this agreement, the City’s hauler is required to provide support to the school district as well.

Alternative WMLA Rate Proposal

The RFP required that the successful proposer replace all refuse, recycling and green waste carts with new carts. The successful proposer is entitled to retain revenue received from recycling the old carts. The existing carts, purchased in 2002 by WMLA, are owned by the City, but were labeled with WMLA’s logo. WMLA offered a reduction to the residential rates if WMLA is permitted to continue using the existing carts in the previously automated area of the City. New carts would be provided in the Sand Section under either option.

Legal Disclosures

The RFP required the proposers to describe certain legal actions meeting the disclosure requirements that occurred in the past ten years against the entity submitting the proposal, its key personnel, or affiliated companies in the State of California. See page 4-13 of Attachment 4 for details.

Proposer	# of Legal Disclosures
Athens	6
Crown	1
WMLA	5
WRI	0

An organization called “Montebello Residents for Honest Government PAC” established a website www.stopathens.org. Athens provides exclusive residential service in this city, while multiple haulers compete to provide commercial service. The city awarded Athens an exclusive commercial agreement, to be effective after a required five-year notice to existing commercial haulers ends. This agreement was awarded without a competitive process. The cities of Lawndale and Rancho Palos Verdes, in

which Athens had submitted a proposal, received information from third parties referring those cities to the www.stopathens.org website, which includes a range of negative allegations against Athens. One Montebello Council member contacted the City of Rancho Palos Verdes during that city’s 2009 RFP process and referred it to www.stopathens.org. In response, Athens provided a letter of support signed by three of the Montebello City Councilmembers to the City of Rancho Palos Verdes. See Attachment 7 for a response from Athens regarding assertions made on this website.

On March 8, 2011, the City of Monterey Park is set to vote on whether the city’s trash collection contract must be awarded through a competitive bidding process. Athens currently holds a 15-year collection agreement ending in 2017. Per an article in the San Gabriel Valley Tribune dated January 5, 2011, a judge rejected a lawsuit to block the ballot measure, filed by a resident and reportedly prepared by an attorney who works with Athens. See Attachment 10 for article.

LAANE, an advocacy organization, submitted a letter to the City of Redondo Beach on January 4, 2011, the day of award of its solid waste contract. The letter urged the city to select a hauler other than Athens and included a list of Athens’ legal and regulatory issues. See Attachment 11 for letter.

Reference Checks

HF&H conducted reference checks for each of the four proposers interviewed. HF&H contacted each proposer’s references regarding the proposer’s performance in the areas of customer service, program implementation, and working with the public agency. HF&H then solicited an overall rating reflecting each city’s satisfaction with their hauler.

Reference Check Summary - Sorted Highest to Lowest

Proposer	# of References	Ratings by Municipal References ⁽¹⁾
Athens	13	4.2
Crown	5	4.2
WMLA	14	4.0
WRI	1	4.0

⁽¹⁾ 1 = Unsatisfactory, 2 = Below Expectations, 3 = Satisfactory, 4 = Above Expectations, 5 = Exceptional Performance

Proposed Rate Revenue

Proposers were asked to propose monthly rates for various services to be provided under the new agreement. The rates are adjusted annually based on changes in a weighted rate adjustment formula using published price indices for labor, fuel, equipment, and other costs. Proposers were permitted to propose adjustment methods

for disposal costs, as detailed further on page 8 under Disposal Component Adjustment and Rate Caps. Total first-year costs were calculated by multiplying the proposed rates for each type of service by the number of customers receiving that service (see Attachment 3). This is the best method to compare overall costs.

Best and Final Rate Revenue Results

During the best and final negotiations process, all three finalists reduced lowered their proposed rates. The City is interested in the optional services available through this process, which include door-to-door household hazardous waste collection, processing of additional bin refuse, and permanent food waste diversion programs. Therefore, the following analysis compares companies' proposed rate revenues both with and without all optional programs.

Crown's proposal includes food waste in either scenario because it included food waste diversion programs as a standard service at no additional charge. Athens provided rates with and without permanent food waste programs. WMLA does not offer permanent food waste programs at this time

Crown and Athens' proposals include processing of all bin refuse under both scenarios. WMLA proposes to provide additional bin refuse processing at a 16% increase to commercial and multi-family bin rates.

Each proposer offers door-to-door HHW collection for an additional cost per home per month.

The chart below indicates the reduction in rate revenue projected over the 7-year agreement term proposed during the "best and final" process by each company. Rate revenues proposed by all three haulers were reduced by similar amounts.

**Comparison of Initial Proposals to Best and Final
Decrease in 7-Year Rate Revenue**

Proposer	Including Optional Services *	Excluding Optional Services
Athens	n/a	-6%
Athens – Including Food Waste	-7%	n/a
Crown – Including Food Waste	-8%	-8%
WMLA – Existing Carts	-8%	-7%
WMLA – New Carts	-6%	-7%

* Door-to-door HHW collection and additional bin refuse processing included. Permanent food waste programs included where noted in previous section.

The following are the proposed best and final rate revenues over the seven-year term for each proposer, both including and excluding optional programs. These revenues, and all rates and revenues presented in this report, are based on contractor rates, excluding City Recovery Costs. The projected rate revenues include the following terms that occur after the first year:

1. Differences in the proposed methods to adjust the disposal cost component.
2. Athens’ proposed 2014 residential rate adjustment for green waste processing due to closure of Puente Hills Landfill.
3. Crown’s waiver of the first rate increase.

7-Year Projected Rate Revenues, Including All Optional Programs*

Proposer	7-Year Rate Revenue Projection	Amount Above Lowest 7-Year Rate Revenue Projection	
		\$	%
Athens – Including Food Waste	\$23.4 million	-	-
Crown – Including Food Waste	\$23.8 million	\$0.4 million	2%
WMLA – Existing Carts	\$27.1 million	\$3.7 million	16%
WMLA – New Carts	\$28.2 million	\$4.8 million	21%

* Door-to-door HHW collection and additional bin refuse processing included. Permanent food waste programs included where noted.

7-Year Projected Rate Revenues, Excluding Optional Programs

Proposer	7-Year Rate Revenue Projection	Amount Above Lowest 7-Year Rate Revenue Projection	
		\$	%
Athens - Excluding Food Waste	\$22.3 million	-	-
Crown – Including Food Waste	\$23.0 million	\$0.7 million	3%
WMLA – Existing Carts	\$25.3 million	\$3.0 million	13%
WMLA – New Carts	\$26.3 million	\$4.0 million	18%

* Includes permanent food waste program.

The following charts compare the actual rates to be charged under each proposal, with optional services included. These rates include a per home per month fee for HHW.

First-Year Monthly Contractor Rates – Including Optional Services⁽¹⁾

Proposer	Refuse Cart Size (sorted low to high)		
	32-Gallon	64-Gallon	96-Gallon
Crown – Including Food Waste ⁽²⁾	\$ 7.10	\$ 11.10	\$ 15.10
Athens – Including Food Waste	\$ 7.12	\$ 11.12	\$ 15.12
WMLA – Existing Carts	\$ 8.65	\$ 12.65	\$ 16.65
WMLA – New Carts	\$ 9.51	\$ 13.51	\$ 17.51
WRI	\$ 13.63	\$ 17.63	\$ 21.63
Current Rate	\$12.02 – unlimited service ⁽³⁾		

⁽¹⁾ Excludes City Recovery Costs.

⁽²⁾ Rates for first two years.

⁽³⁾ Excludes optional services.

Single-family customers requesting more than one refuse cart will be charged an additional fee per extra cart per month, based upon cart size. Additional recycling and green waste carts shall be provided at no additional cost. These rates are unaffected by the inclusion of optional programs. Rates for the extra single family carts were defined in the City’s RFP and are the same for all proposers as shown in the table below.

Extra Cart Rates – First-Year

Cart Type	Extra Cart Rate Per Cart Per Month		
	32-Gallon	64-Gallon	96-Gallon
Refuse – more than one	\$ 4.00	\$ 6.00	\$ 8.00
Recycling – unlimited	no charge	no charge	no charge
Green Waste – unlimited	no charge	no charge	no charge

⁽¹⁾ Applies to single family dwelling units only. Under current agreement, residents may have unlimited carts. Does not include City Recovery Costs.

Rates, including optional services, for multi-family and commonly subscribed to commercial services are shown in the table below. Note that which hauler offers the lowest rate can depend upon which service level is selected.

Rates for Other Common Services, Including Optional Services – First Year ⁽¹⁾

Rate Category	Customer Count	Current ⁽²⁾	Athens Food Waste	Crown Food Waste	WMLA Existing Carts	WMLA New Carts
Multi-family cart/unit	2,931	\$11.42	\$11.12	\$11.10	\$11.49	\$12.25
Commercial can-1x/wk	129	\$13.15	\$13.00	\$20.00	\$13.86	\$13.86
Bin – 2 yd. 1x/wk	88	\$66.73	\$55.29	\$72.00	\$78.51	\$78.51
Bin – 2 yd. 2x/wk	63	\$100.10	\$104.83	\$105.11	\$122.69	\$122.69
Bin – 2 yd. 3x/wk	32	\$133.45	\$154.37	\$145.00	\$163.56	\$163.56
Bin – 2 yd. 4x/wk	4	\$166.83	\$203.90	\$185.17	\$204.47	\$204.47
Bin – 2 yd. 5x/wk	2	\$200.18	\$253.43	\$220.19	\$245.36	\$245.36
Bin – 2 yd. 6x/wk	4	\$266.91	\$302.94	\$290.26	\$327.14	\$327.14
Bin – 2 yd. 7x/wk	11	\$333.62	\$352.50	\$350.30	\$408.91	\$408.91
Standard Roll-Off Pull	505/yr	\$154.51	\$145.00	\$140.00	\$154.51	\$154.51
Roll-Off Refuse/Ton	1,869/yr	\$34.00	\$42.00	\$39.75	\$52.96	\$52.96
Temp. Bin – 1 st pull	116/yr	\$80.58	\$85.00	\$75.00	\$81.21	\$81.21
Temp. Bin – add'l pulls	193/yr	\$26.85	\$50.00	\$75.00	\$27.06	\$27.06

⁽¹⁾ Does not include City Recovery Costs.

⁽²⁾ Does not include optional services.

Sensitivity Analysis

The City's Finance Subcommittee requested a sensitivity analysis to examine the effect of changes to the disposal components on overall rates. The Crown disposal component adjustment is based on actual costs, capped at the change in the Puente Hills Landfill gate rate. The disposal components for WMLA and Athens are adjusted based upon the change in the CPI. The impact on rate revenue based upon a 5% change in the disposal component under each proposal is shown below. The disposal component is a smaller portion of Crown's rates because Crown guaranteed higher diversion and projects disposal of less waste than the other finalists. Additionally, Crown proposed that the disposal of residue be identified in the rate adjustment formula separately from processing or green waste disposal; therefore, changes to the disposal component have a smaller impact on Crown's rates.

Disposal Component Sensitivity Analysis

Proposer	Component	Adjustment Method	Weighting	Change in Total One-Year Rate Revenue Based on 5% Change in Disposal-Related Component
Athens	Disposal/Green Waste/Organics/Processing	CPI (1)	44%	2.2%
Crown	Disposal of Residual	Actual Cost (2)	12%	0.6%
WMLA	Disposal/Green Waste/Processing	CPI (1)	40%	2.0%

(1) Capped at 5% per year.

(2) Not to exceed change at Puente Hills Landfill/Material Recovery Facility.

Vehicle Specifications

Per the RFP, collection vehicles are required to use natural gas and to be no more than 10 years old at any time during the contract term. Proposed collection vehicle descriptions are included in Attachment 4 on page 4-8. The contractor is contractually required to provide sufficient vehicles, including backup vehicles, to meet the City's needs. Crown and WMLA's route hours are within 3% of each other.

Routes and Route Collection Vehicles Proposed

Proposer	Model Year	Fuel Type	Route Hours⁽¹⁾
Athens	2010	CNG	627
Crown	2010	CNG or LNG	515
WMLA	2003	LNG	531

⁽¹⁾ Net of roll-off box collection routes.

Sand Section

The Sand Section of the City poses collection challenges with its narrow streets and alleys, and its hills. Two of the proposers addressed how they will service this area in their proposals.

Crown proposes to use small “scout” vehicles to transport carts from the east and west running streets, or hill streets, to the flatter north and south running streets for collection by the larger collection vehicle. These scout vehicles have two axles, versus four axles on a typical collection vehicle, with a gross vehicle weight of 5,000 pounds.

WMLA plans to continue to use the existing vehicles, which are equipped with the Curotto can system until the current vehicles are replaced. This system consists of a can mounted on the front of the collection vehicle. Carts and cans are emptied into this large can and, when the can is full, the can is raised and emptied into the body of the vehicle.

Summary of Observations

Waste Resources cost proposal, which is 61% higher than the current rates, was not competitive. Among the other three proposers (Athens, Crown and WMLA), all have good references and are successfully providing services in other Los Angeles County cities, and all three companies have reasonable financial resources relative to the size of the Manhattan Beach contract. We also note the following:

1. Athens and Crown proposed the lowest overall costs. Over the seven year term, their rate proposals are within 2% of each other with optional services included, with Athens offering lower costs. Athens has more franchise experience. If all optional services are included, WMLA’s seven-year cost to the ratepayers is 21% higher than Athens and 18% higher than Crown. Permitting WMLA to continue using existing carts reduces this difference to 16% higher than Athens and 14% higher than Crown.
2. Crown proposed the highest diversion, well above all other proposers and offered high value for the price proposed. Crown guarantees to divert 70% of the waste collected, versus 55% for Athens, and 57% initially for WMLA, increasing to 62% by the end of the contract term (including optional services. If optional services are not

included, Athens' diversion rate would be 50% and WMLA guarantees an initial diversion rate of 50%, increasing to 55% by the end of the term.

3. WMLA, as the incumbent hauler, would minimize service transition issues for customers. WMLA has proposed the largest number of public outreach hours as shown on page 4-11 of Attachment 4. WMLA has the largest financial resources to help mitigate any unexpected adverse financial impacts in the future.

In conclusion, depending on the City's priorities, we recommend selecting:

- Crown if the City's primary goal is to maximize waste diversion and sustainability.
- Athens if the City's primary goal is to minimize ratepayer costs.
- WMLA if the City's primary goal is to minimize transition and operating risk and continue service with a known entity.

Attachments

1. 7-Year Rate Revenues and Diversion Rates, With and Without Additional Services
2. Summary of Proposals
3. Proposed Rate Revenue
4. Detailed Proposal Matrix
5. Summary of Key Services and Contract Terms Requested in the RFP
6. Proposed Rates – Seven-Year Rate Revenue Projection Detail
7. Athens' Response to www.StopAthens.org
8. Kern County October 8, 2010 letter to CRRR
9. Kern County October 19, 2010 status report to Kern County Board of Supervisors
10. San Gabriel Valley Tribute article dated January 5, 2011
11. LAANE Letter to City of Redondo Beach dated January 3, 2011
12. Diversion Plan Comparison – Projected Year-One Diversion of Hauler-Collected Solid Waste

**City of Manhattan Beach
Solid Waste Proposal Summary - Best and Final Offers
Excluding Optional Services**

Proposal	Residential Carts	Food Waste Diversion Included	Guaranteed Diversion	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	New	No	50%	\$ 22.3 million	--
Crown	New	Yes	70%	\$ 23.0 million	3%
WMLA/Existing Carts (2)	Existing	No	50%(3)	\$ 25.3 million	13%
WMLA/New Carts	New	No	50%(3)	\$ 26.3 million	18%

(1) Athens provided an additional cost for permanent food waste diversion programs. Crown included permanent food waste collection in its base proposal and WMLA was not offering such a program at this time.

(2) RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

(3) Proposed phase-in of higher rate: 1st year - 50%, 2nd year - 51%, 3rd year - 52%, 4th year - 53%, 5th year 54%, 6th and 7th year - 55%.

City of Manhattan Beach
Solid Waste Proposal Summary - Best and Final Offers
Including Optional Residential Door-to-Door HHW Collection & Processing of Additional Bin Refuse

Proposal	Residential Carts	Food Waste Diversion Included (1)	Guaranteed Diversion	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens/Food Waste	New	Yes	55%	\$ 23.4 million	--
Crown	New	Yes	70%	\$ 23.8 million	2%
WMLA/Existing Carts (2)	Existing	No	57%(3)	\$ 27.1 million	16%
WMLA/New Carts	New	No	57%(3)	\$ 28.2 million	21%

(1) Athens provided an additional cost for permanent food waste diversion programs. Crown included permanent food waste collection in its base proposal and WMLA was not offering such a program at this time.

(2) RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

(3) Proposed phase-in of higher rate: 57% during the 1st year the first full calendar year and 62% by the 5th year.

Summary of Proposals (in alphabetical order)

	PROPOSING ENTITY	REGIONAL HEADQUARTERS	MANHATTAN BEACH CONTRACT REVENUE AS A % OF COMPANY REVENUE	PROPOSED START DATE
Athens	Arakelian Enterprises, Inc. dba Athens Services	City of Industry	2%	June 1, 2011
Crown	Crown Disposal Co., Inc.	Sun Valley	7%*	June 1, 2011
Waste Management	USA Waste of California, Inc., dba Waste Management of Los Angeles	Long Beach, CA	<0.01%	June 1, 2011
Waste Resources	Waste Resources, Inc.	Los Angeles	36%	July 1, 2011

* Calculation does not include revenue from sister company Community Recycling and Resource Recovery reported as \$50 million/year.

	PROPOSED FIRST YEAR RATE REVENUE *		PROJECTED 7-YEAR RATE REVENUE**	PROPOSED DIVERSION RATE	# OF CONTRACT EXCEPTIONS ACCEPTED BY CITY
	WITHOUT OPTIONAL SERVICES	WITH OPTIONAL SERVICES			
Athens	\$2.8 million	\$2.9 million	\$22.3 million	50%	0
Athens - food waste	\$3.0 million	\$3.1 million	\$23.0 million	55%	0
Crown - food waste	\$3.0 million	\$3.1 million	\$23.0 million	70%	0
Waste Management - Used Carts	\$3.3 million	\$3.5 million	\$25.3 million	50% 1 st year, increasing to 55% in 6 th year	4
Waste Management - New Carts	\$3.4 million	\$3.7 million	\$26.3 million		4
Waste Resources	\$5.1 million	\$5.3 million	\$39.4 million	44%	0

* Based upon average proposed cart distribution assumptions.

** Based upon proposed cost component weightings and proposed disposal cost adjustment factors.

	RESIDENTIAL HHW DOOR-TO-DOOR PROGRAM	COMMERCIAL/MULTI-FAMILY BIN RATE INCREASE TO PROCESS 100% OF BIN WASTE	RATE CAP/DISPOSAL COMPONENT ADJUSTMENT	LOS ANGELES COUNTY EXPERIENCE # OF EXCLUSIVE FRANCHISES
Athens	\$0.38 per household per month	Included at no additional charge.	Disposal cost component, including landfill and green waste, adjusted by the change in the CPI (All urban consumers - Los Angeles, Riverside, Orange County), or 5%, whichever is less. Any increase in excess of 5% will be carried forward to next year. Under option without food waste there is a one-time extraordinary adjustment for green waste processing costs due to closure of Puente Hills Landfill in 2013.	19
Crown	\$0.55 per household per month	Included at no additional charge.	First year rate adjustment waived. Processing of incoming tonnage, including green waste: change in CPI. Disposal of residue: change in actual average per ton disposal cost, capped at dollar change in the Puente Hill Landfill gate rate.	4
Waste Management	\$0.40 per household per month	16% \$173,000/year	Disposal/green waste rate adjustment factor: CPI for all urban consumers, all items less food and energy index (US city average), capped at 5% per year.	25
Waste Resources	\$0.36 per household per month	10% \$181,000/year	Disposal cost component adjusted based upon the change in the average rate at Puente Hills Landfill, California Waste Services, and WRI's facility Waste Resources Recovery.	1

City of Manhattan Beach
Standardized Rate Revenue Comparison

Annual Rate Revenue Summary

Line	Service Category	Annual Rate Revenue							
		Current Rates	WMLA Previously Negotiated for 7/1/2011	Athens	Athens w/Food Waste	Crown	WMLA Existing Carts	WMLA New Carts	WRI
	Standard Services								
1	Single Family Cart Service Rate Revenue	\$ 1,578,000	\$ 1,776,000	\$ 1,369,000	\$ 1,443,000	\$ 1,418,000	\$ 1,641,000	\$ 1,754,000	\$ 2,297,000
2	Multi-Family Cart Service Rate Revenue	\$ 401,000	\$ 447,000	\$ 363,000	\$ 382,000	\$ 376,000	\$ 396,000	\$ 423,000	\$ 509,000
3	Bin and Commercial Cart Service Rate Revenue	\$ 987,000	\$ 1,098,000	\$ 919,000	\$ 968,000	\$ 1,060,000	\$ 1,037,000	\$ 1,037,000	\$ 1,854,000
4	Roll-off Box and Temporary Rate Revenue	\$ 186,000	\$ 213,000	\$ 195,000	\$ 195,000	\$ 193,000	\$ 221,000	\$ 221,000	\$ 401,000
5	Total Customer Rate Revenue	\$ 3,152,000	\$ 3,534,000	\$ 2,846,000	\$ 2,988,000	\$ 3,047,000	\$ 3,295,000	\$ 3,435,000	\$ 5,061,000
6	Percent above (below) Manhattan Beach Current Rates	-	12%	-10%	-5%	-3%	5%	9%	61%
	Optional Services								
7	Mixed Waste Processing of All Bin Waste (%)	-	-	0%	0%	0%	16%	16%	10%
8	Mixed Waste Processing of All Bin Waste (\$)	-	-	\$ -	\$ -	\$ -	\$ 160,000	\$ 160,000	\$ 181,000
9	Door-to-Door Household Hazardous Waste Program	-	-	\$ 63,000	\$ 63,000	\$ 103,000	\$ 78,000	\$ 78,000	\$ 60,000
10	Total Customer Rate Revenue, including optional services	-	-	\$ 2,909,000	\$ 3,051,000	\$ 3,150,000	\$ 3,533,000	\$ 3,673,000	\$ 5,302,000
11	Percent above (below) Manhattan Beach Current Rates, including optional services	-	-	-8%	-3%	0%	12%	17%	68%

**City of Manhattan Beach
Standardized Rate Revenue Comparison**

Single Family & Multi-Family Cart Service Rates

Line	Service Category	Customer Monthly Rates								Billing Units	Monthly Rate Revenue							
		Current Rates	WMLA Previously Negotiated for 7/1/2011	Athens	Athens Food Waste	Crown	WMLA Existing Carts	WMLA New Carts	WRI		Current Rates	WMLA Previously Negotiated for 7/1/2011	Athens	Athens Food Waste	Crown	WMLA Used Carts	WMLA New Carts	WRI
1	Single Family																	
	Current Rate - Any Size, Unlimited	\$ 12.02								10,918	\$ 131,234							
	Proposed Automated Cart Rate																	
2	95-gallon cart	\$ 15.44	\$ 14.18	\$ 14.74	\$ 14.55	\$ 16.25	\$ 17.11	\$ 21.27	467	\$ 7,209	\$ 6,622	\$ 6,884	\$ 6,795	\$ 7,589	\$ 7,990	\$ 9,933		
3	64-gallon cart	\$ 13.61	\$ 10.18	\$ 10.74	\$ 10.55	\$ 12.25	\$ 13.11	\$ 17.27	9,395	\$ 127,909	\$ 95,641	\$ 100,902	\$ 99,117	\$ 115,089	\$ 123,168	\$ 162,252		
4	32-gallon cart	\$ 11.91	\$ 6.18	\$ 6.74	\$ 6.55	\$ 8.25	\$ 9.11	\$ 13.27	1,056	\$ 12,576	\$ 6,526	\$ 7,117	\$ 6,917	\$ 8,712	\$ 9,620	\$ 14,013		
5	Total Carts								10,918									
6	Backyard Surcharge	\$ 6.97	\$ 7.78	\$ 5.09	\$ 5.37	\$ 6.00	\$ 7.00	\$ 7.00	\$ 3.00	39	\$ 272	\$ 303	\$ 199	\$ 209	\$ 234	\$ 273	\$ 117	
	Proposed Extra Cart Rate																	
7	95-gallon cart	\$ -	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.00	\$ 8.00	26	\$ -	\$ 208	\$ 208	\$ 208	\$ 208	\$ 208	\$ 208		
8	64-gallon cart	\$ -	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.00	\$ 6.00	758	\$ -	\$ 4,548	\$ 4,548	\$ 4,548	\$ 4,548	\$ 4,548	\$ 4,548		
9	32-gallon cart	\$ -	\$ 4.00	\$ 4.00	\$ 4.00	\$ 4.00	\$ 4.00	\$ 4.00	90	\$ -	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360	\$ 360		
10	Gross Monthly Single Family Revenue										\$ 131,506	\$ 147,997	\$ 114,104	\$ 120,228	\$ 118,179	\$ 136,779	\$ 146,167	\$ 191,431
11	Months per year										12	12	12	12	12	12	12	12
12	Gross Annual Single Family Revenue*										\$ 1,578,000	\$ 1,776,000	\$ 1,369,000	\$ 1,443,000	\$ 1,418,000	\$ 1,641,000	\$ 1,754,000	\$ 2,297,000
	Multi-Family																	
	Automated Refuse Service - Per Building																	
13	2 Dwelling Units	\$ 22.83	\$ 25.47	\$ 20.36	\$ 21.48	\$ 21.10	\$ 22.17	\$ 23.69	\$ 30.00	950	\$ 21,689	\$ 24,197	\$ 19,342	\$ 20,406	\$ 20,045	\$ 21,062	\$ 22,506	\$ 28,500
14	3 Dwelling Units	\$ 33.05	\$ 36.88	\$ 30.54	\$ 32.22	\$ 31.65	\$ 33.26	\$ 35.54	\$ 40.00	183	\$ 6,048	\$ 6,749	\$ 5,589	\$ 5,896	\$ 5,792	\$ 6,087	\$ 6,503	\$ 7,320
15	4 Dwelling Units	\$ 43.27	\$ 48.28	\$ 40.72	\$ 42.96	\$ 42.20	\$ 44.34	\$ 47.38	\$ 50.00	91	\$ 3,938	\$ 4,394	\$ 3,706	\$ 3,909	\$ 3,840	\$ 4,035	\$ 4,312	\$ 4,550
16	5 Dwelling Units	\$ 53.46	\$ 59.65	\$ 50.90	\$ 53.70	\$ 52.75	\$ 55.43	\$ 59.23	\$ 60.00	3	\$ 160	\$ 179	\$ 153	\$ 161	\$ 158	\$ 166	\$ 178	\$ 180
17	6 Dwelling Units	\$ 63.69	\$ 71.06	\$ 61.08	\$ 64.44	\$ 63.30	\$ 66.51	\$ 71.07	\$ 70.00	10	\$ 637	\$ 711	\$ 611	\$ 644	\$ 633	\$ 665	\$ 711	\$ 700
18	7 Dwelling Units	\$ 73.90	\$ 82.45	\$ 71.26	\$ 75.18	\$ 73.85	\$ 77.60	\$ 82.92	\$ 82.00	5	\$ 370	\$ 412	\$ 356	\$ 376	\$ 369	\$ 388	\$ 415	\$ 410
19	8 Dwelling Units	\$ 84.12	\$ 93.86	\$ 81.44	\$ 85.92	\$ 84.40	\$ 88.68	\$ 94.76	\$ 94.00	1	\$ 84	\$ 94	\$ 81	\$ 86	\$ 84	\$ 89	\$ 95	\$ 94
20	9 Dwelling Units	\$ 94.33	\$ 105.25	\$ 91.62	\$ 96.66	\$ 94.95	\$ 99.77	\$ 106.61	\$ 104.00	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
21	Total Buildings									1,243								
	Backyard Service Surcharge - Per Building																	
23	2 Dwelling Units	\$ 13.28	\$ 14.82	\$ 10.88	\$ 10.88	\$ 12.00	\$ 14.00	\$ 14.00	\$ 20.00	22	\$ 292	\$ 326	\$ 239	\$ 239	\$ 264	\$ 308	\$ 308	\$ 440
24	3 Dwelling Units	\$ 19.22	\$ 21.44	\$ 16.32	\$ 16.32	\$ 18.00	\$ 21.00	\$ 21.00	\$ 25.00	5	\$ 96	\$ 107	\$ 82	\$ 82	\$ 90	\$ 105	\$ 105	\$ 125
25	4 Dwelling Units	\$ 25.15	\$ 28.06	\$ 21.76	\$ 21.76	\$ 24.00	\$ 28.00	\$ 28.00	\$ 30.00	3	\$ 75	\$ 84	\$ 65	\$ 65	\$ 72	\$ 84	\$ 84	\$ 90
26	5 Dwelling Units	\$ 31.10	\$ 34.71	\$ 27.20	\$ 27.20	\$ 30.00	\$ 35.00	\$ 35.00	\$ 40.00	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
27	6 Dwelling Units	\$ 37.03	\$ 41.32	\$ 32.64	\$ 32.64	\$ 36.00	\$ 42.00	\$ 42.00	\$ 45.00	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
28	7 Dwelling Units	\$ 42.98	\$ 48.03	\$ 38.08	\$ 38.08	\$ 42.00	\$ 49.00	\$ 49.00	\$ 50.00	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
29	8 Dwelling Units	\$ 48.91	\$ 54.57	\$ 43.52	\$ 43.52	\$ 48.00	\$ 56.00	\$ 56.00	\$ 55.00	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
30	9 Dwelling Units	\$ 54.86	\$ 61.21	\$ 48.96	\$ 48.96	\$ 54.00	\$ 63.00	\$ 63.00	\$ 65.00	-	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
31	Total Buildings with Backyard Service									30								
32	Gross Monthly Revenue										\$ 33,389	\$ 37,253	\$ 30,224	\$ 31,864	\$ 31,347	\$ 32,989	\$ 35,217	\$ 42,409
33	Months per year										12	12	12	12	12	12	12	12
34	Gross Annual Revenue(3)										\$ 401,000	\$ 447,000	\$ 363,000	\$ 382,000	\$ 376,000	\$ 396,000	\$ 423,000	\$ 509,000

(1) Rounded to the nearest thousand.

City of Manhattan Beach
Standardized Rate Revenue Comparison

Attachment 3

Roll-off Box and Temporary Bin Service Rates

Line	Service Category	Rates								Billing Units	Monthly Rate Revenue							
		Current Rates	WMLA Previously Negotiated for 7/1/2011	Athens	Athens Food Waste	Crown	WMLA Existing Carts	WMLA New Carts	WRI		Current Rates	WMLA Previously Negotiated for 7/1/2011	Athens	Athens Food Waste	Crown	WMLA Existing Carts	WMLA New Carts	WRI
Roll-off Box Pulls																		
1	Standard Roll-off Charge Per Pull	\$ 154.51	\$ 176.80	\$ 145.00	\$ 145.00	\$ 140.00	\$ 154.51	\$ 154.51	\$ 450.00	505	\$ 78,028	\$ 89,283	\$ 73,225	\$ 73,225	\$ 70,700	\$ 78,028	\$ 78,028	\$ 227,250
2	Weekly Standard Roll-off Rental	\$ 27.68	\$ 31.67	\$ 27.68	\$ 27.68	\$ -	\$ 27.60	\$ 27.60	\$ 30.00	30	\$ 830	\$ 950	\$ 830	\$ 830	\$ -	\$ 828	\$ 828	\$ 900
3	Compactor Roll-off charge Per Load	\$ 208.59	\$ 238.68	\$ 165.00	\$ 165.00	\$ 178.00	\$ 208.59	\$ 208.59	\$ 230.00	138	\$ 28,785	\$ 32,938	\$ 22,770	\$ 22,770	\$ 24,564	\$ 28,785	\$ 28,785	\$ 31,740
4	Weekly Compactor Roll-off Rental	\$ 37.27	\$ 42.64	\$ 37.27	\$ 37.27	\$ 25.00	\$ 27.60	\$ 27.60	\$ 45.00	4	\$ 149	\$ 171	\$ 149	\$ 149	\$ 100	\$ 110	\$ 110	\$ 180
Roll-off Box Tons																		
5	Landfill Tonnage	\$ 34.00	\$ 38.90	\$ 42.00	\$ 42.00	\$ 39.75	\$ 52.96	\$ 52.96	\$ 55.00	1,869	\$ 63,546	\$ 72,713	\$ 78,498	\$ 78,498	\$ 74,293	\$ 98,982	\$ 98,982	\$ 102,795
6	Mixed Recyclables Tonnage	\$ 34.00		\$ -	\$ -	\$ -	\$ -	\$ -	\$ 30.00									
7	Green Waste Tonnage	\$ 34.00		\$ 19.95	\$ 19.95	\$ 36.00	\$ 50.12	\$ 50.12	\$ 44.00									
8	Gross Annual Roll-off Box Revenue										\$ 171,338	\$ 196,055	\$ 175,472	\$ 175,472	\$ 169,657	\$ 206,733	\$ 206,733	\$ 362,865
Temporary, Per Pull																		
9	2 cubic yard	\$ 71.62	\$ 81.95	\$ 75.65	\$ 75.65	\$ 66.75	\$ 72.28	\$ 72.28	\$ 133.50		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
10	3 cubic yard	\$ 80.58	\$ 92.21	\$ 85.00	\$ 85.00	\$ 75.00	\$ 81.21	\$ 81.21	\$ 150.00	116	\$ 9,347	\$ 10,696	\$ 9,860	\$ 9,860	\$ 8,700	\$ 9,420	\$ 9,420	\$ 17,400
11	4 cubic yard	\$ 89.53	\$ 102.44	\$ 94.35	\$ 94.35	\$ 83.25	\$ 90.14	\$ 90.14	\$ 166.50		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12	6 cubic yard	\$ 107.44	\$ 122.94	\$ 113.50	\$ 113.50	\$ 99.75	\$ 108.01	\$ 108.01	\$ 199.50		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Temporary, Each Additional Pull																		
13	2 cubic yard	\$ 17.92	\$ 20.50	\$ 33.50	\$ 33.50	\$ 50.25	\$ 18.13	\$ 18.13	\$ 73.70		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
14	3 cubic yard	\$ 26.85	\$ 30.73	\$ 50.00	\$ 50.00	\$ 75.00	\$ 27.06	\$ 27.06	\$ 110.00	193	\$ 5,182	\$ 5,930	\$ 9,650	\$ 9,650	\$ 14,475	\$ 5,223	\$ 5,223	\$ 21,230
15	4 cubic yard	\$ 35.82	\$ 40.99	\$ 66.50	\$ 66.50	\$ 99.75	\$ 35.99	\$ 35.99	\$ 146.30		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
16	6 cubic yard	\$ 53.71	\$ 61.46	\$ 100.00	\$ 100.00	\$ 150.00	\$ 54.12	\$ 54.12	\$ 220.00		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
17	Gross Annual Temporary Revenue										\$ 14,529	\$ 16,626	\$ 19,510	\$ 19,510	\$ 23,175	\$ 14,643	\$ 14,643	\$ 38,630
18	Gross Annual Roll-off Box and Temporary Revenue*										\$ 186,000	\$ 213,000	\$ 195,000	\$ 195,000	\$ 193,000	\$ 221,000	\$ 221,000	\$ 401,000

* Rounded to the nearest thousand.

**City of Manhattan Beach
Standardized Rate Revenue Comparison**

Optional Construction & Demolition Service Rates

Line	Service Category	Rates			
		Athens (with or without food waste)	Crown	WMLA (new or existing carts)	WRI
	Roll-off Box Service				
	<u>Service Component</u>				
1	25 to 40 Cubic Yard Roll-off Box	\$ 165.00	\$ 140.00	\$ 154.51	\$ 465.00
2	Low Boy (10 Cubic Yard) Roll-off Box	\$ 165.00	\$ 140.00	\$ 154.51	\$ 365.00
	<u>Roll-off Per-Ton Refuse Disposal/Processing</u>				
3	Mixed C&D Loads	\$ 48.00	\$ 39.75	\$ 35.02	\$ 55.00
4	Source Separated (dirt, concrete, wood, etc.) (1)	n/a	n/a	n/a	n/a
	<u>Temporary Bin Service (3 Cubic Yard)</u>				
5	First Dump, including delivery and disposal	\$ 85.00	\$ 75.00	\$ 81.21	\$ 165.00
6	Additional Dumps, including disposal	\$ 50.00	\$ 75.00	\$ 27.06	\$ 100.00

(1) Actual facility cost, no higher than mixed load rate

Attachment 4
City of Manhattan Beach
Detailed Proposal Matrix
February 8, 2011

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Proposer Overview

	CORPORATE HEADQUARTERS	GUARANTOR (PARENT COMPANY)
Athens	City of Industry, CA	N/A
Crown	Sun Valley, CA	N/A
Waste Management	Houston, TX	Waste Management, Inc.
Waste Resources	Newport Beach, CA	N/A

Experience

	OVERALL EXPERIENCE
Athens	<p>Incorporated in 1958, Athens Services (“Athens”) is a family-owned company operating primarily in the Los Angeles region, and in Riverside.</p> <p>Athens cites 18 exclusive service contracts with jurisdictions in the greater Los Angeles area and indicates non-exclusive services in over 40 cities and other areas.</p> <p>Athens operates mixed waste and construction and demolition debris processing facilities in Los Angeles County, as well as American Organics, which is permitted to accept green waste and food waste.</p>
Crown	<p>Crown Disposal (“Crown”) was incorporated in 1968, and has remained an independent, privately held company since. It services jurisdiction exclusively in Los Angeles County.</p> <p>Crown’s sister company, Community Recycling and Resource Recovery, operates a compost site, a transfer station, and a materials processing facility in Sun Valley and a composting site in Lamont. Other sister companies include two biomass fueled power plants in Madera County and City of Dinuba, California.</p>
Waste Management	<p>The proposer, USA Waste of California, Inc. dba Waste Management of Los Angeles (“WMLA”), is a Delaware corporation formed in 1993. WMLA is wholly owned by Waste Management, Inc., the proposer’s parent company and guarantor.</p> <p>WMLA, or a company predecessor, has been providing service in the city of Manhattan Beach for over 25 years. The proposer has an understanding of the unique needs of the community. The proposer cites current experience in 25 Los Angeles County jurisdictions on an exclusive basis, with an additional 10 jurisdictions served on a non-exclusive basis. Waste Management owns and operates multiple solid waste facilities throughout the region.</p>
Waste Resources	<p>Waste Resources Incorporated’s (“WRI”) affiliate companies include two hauling companies and one waste-to-energy facility under construction in Hawaii. WRI is also affiliated with Waste Resources Recovery, a material recovery facility and transfer station located in Gardena.</p>

Experience (continued)

	RESIDENTIAL CART COLLECTION EXPERIENCE	BIN COLLECTION EXPERIENCE
Athens	<p>Automated cart collection experience in the cities of Bell Gardens, Covina, Irwindale, La Canada Flintridge (residential recycling only), Monrovia, Montebello, West Covina, Monterey Park, San Gabriel, Sierra Madre, and West Hollywood.</p> <p>Manual collection experience in the cities of Azusa, Palos Verdes Estates, Glendora, San Marino, La Canada Flintridge (residential refuse), South El Monte, Temple City and South Pasadena.</p>	<p>Exclusive bin collection experience in the cities of Azusa, Bell Gardens, Covina, Glendora, Monterey Park, Palos Verdes Estates, San Gabriel, San Marino, Sierra Madre, South El Monte, South Pasadena, Temple City, West Covina, and West Hollywood.</p> <p>Semi-exclusive bin collection in Irwindale, La Canada Flintridge, Riverside and Monrovia.</p> <p>Open area: Montebello.</p> <p>Restaurant food waste collection experience in cities of West Hollywood and Los Angeles.</p>
Crown	<p>Automated three-cart collection experience in the City of San Fernando, with combined residential food and green waste collection.</p>	<p>Exclusive commercial bin collection experience in the cities of Beverly Hills and San Fernando. Restaurant food waste collection experience in the cities of Los Angeles and Beverly Hills.</p> <p>Non-exclusive bin and/or roll-off service in 20 other Los Angeles County cities and two Ventura County.</p> <p>Exclusive temporary bin and roll-off box service in the City of Calabasas. Exclusive agreements with the cities of Los Angeles and Santa Monica to provide C&D collection for city projects.</p> <p>Exclusive multi-family, commercial and C&D hauler for Playa Vista Development (in Los Angeles).</p>
Waste Management	<p>Automated cart collection experience: cities of Agoura Hills, Arcadia, Baldwin Park, Calabasas, Carson, Citrus, Diamond Bar, Hidden Hills, Huntington Park, Inglewood, La Habra Heights, La Verne, Lancaster, Malibu, Moorpark, Palmdale, Rolling Hills Estates, San Dimas, Santa Clarita, Simi Valley, South Gate, Thousand Oaks, Westlake Village, and Whittier, and the County of Ventura.</p> <p>Automated and manual collection: City of Manhattan Beach.</p>	<p>Exclusive: Baldwin Park, Calabasas, Hidden Hills, Inglewood, La Verne, Lancaster, Manhattan Beach, Moorpark, Palmdale, Rolling Hills Estates, San Dimas, Simi Valley, South Gate, Thousand Oaks.</p> <p>Semi-exclusive: Arcadia, Carson, El Monte, Santa Clarita.</p> <p>Open area: Cities of Bell Gardens, Commerce, Irwindale, Long Beach, Malibu, Manhattan Beach, Pasadena, Pomona, Rancho Palos Verdes, Torrance, Westlake Village, and Vernon, and the County of Los Angeles.</p>
Waste Resources	<p>Provides automated cart collection in the City of Gardena.</p>	<p>Cites exclusive experience in the City of Gardena and non-exclusive experience the cities of Los Angeles, Torrance, Manhattan Beach, El Segundo, Burbank, Glendale, Carson and Santa Monica, and in unincorporated areas of L.A. County.</p>

Experience (continued)

	SERVICE TRANSITION EXPERIENCE
Athens	Athens transitioned services from other haulers in the cities of Monrovia (2003) and West Hollywood (2004), the South San Gabriel area of Los Angeles County (2007) and the campuses of UCLA and USC (2008).
Crown	Transitioned collection service in the City of San Fernando (2002) from another hauler, and from manual to automated collection. Provided educational outreach material to residents. Transitioned commercial service from another hauler in the City of Beverly Hills after the previous hauler provided one week's notice that it would pull its bins (2004).
Waste Management	WMLA is the current hauler for the city of Manhattan Beach. The hauler cites the cities of Rolling Hills Estates and Citrus as examples of service transition to automated collection system. WMLA transitioned the City of Rolling Hills Estates to a volume-based rate structure with four cart sizes and manure collection.
Waste Resources	Not described.

Facilities

	OPERATING FACILITY
Athens	15045 Salt Lake Ave., City of Industry
Crown	9189 DeGarmo Ave., Sun Valley
Waste Management	Hauling District, 1970 E. 213 th Street, Long Beach, CA 90810.
Waste Resources	357 W. Compton Boulevard, Gardena

	TRANSFER FACILITIES
Athens	<u>Athens Services Transfer Station</u> 14048 Valley Blvd., City of Industry Gate Rate: \$40 to \$58/ton depending upon landfill used. Facility is company owned and operated.
Crown	<u>Culver City Transfer Station</u> 9255 W. Jefferson, Culver City, CA 90232 Gate Rate: \$10/ton Rate includes transfer services to Crown's facility only, not disposal or processing. <u>Community Recycling Transfer Station</u> 9147 De Garmo Ave., Sun Valley, CA 91352 Cost per ton: \$48.00 Owned and operated by Crown's sister company.
Waste Management	<u>WM Carson Transfer Station</u> 321 West Francisco St., Carson, CA Owned and operated by WM Price per ton: \$52.96
Waste Resources	<u>Waste Resources Recovery, Inc.</u> 357 W. Compton Boulevard, Gardena CA Gate Rate: \$70 per ton 500 tons per day processed This facility is an affiliate of WRI

Facilities (continued)

	DISPOSAL SITE	FOOD WASTE FACILITY
Athens	<p>Chiquita Canyon Landfill Sunshine Canyon Landfill El Sobrante Landfill Puente Hills Landfill</p> <p><u>Commerce Refuse-to Energy</u> 5926 Sheila Street (\$42.00 to \$65.00/ton) Estimated 3,000 tons/year. Price per tin: \$42 to \$65.</p>	<p>American Organics facility 20055 Shay Road, Victorville, CA 92394 Current price per ton: \$45. Facility owned and operated by the hauler.</p>
Crown	<p><u>Puente Hills Landfill</u> 13130 Crossroads Parkway, City of Industry, CA 91746</p> <p><u>SERRF Long Beach</u> 120 Pier S Avenue, Long Beach, CA 90802. Price per ton: \$45.</p> <p><u>Commerce Refuse-to-Energy Facility</u> 5926 Sheila St, Commerce, CA 90040. Price per ton: \$57.</p>	<p><u>Community Recycling Mixed MSW MRF</u> 9147 De Garmo Ave., Sun Valley, CA 91320. Price per ton: \$65 Commercial food waste transferred to Community Recycling's composting facility in Lamont. Facilities owned and operated by sister company.</p>
Waste Management	<p>El Sobrante Landfill, Riverside Owned and operated by hauler.</p> <p><u>SERRF Long Beach</u> 120 Pier S Avenue, Long Beach, CA 90802. Price per ton: \$63, including transfer costs.</p>	<p><u>Reclaimable Anaerobic Composter - Lancaster Landfill</u> 600 E Avenue F, Lancaster, CA Price per ton: \$83. Composter owned and operated by WM. Estimated operations start: 2Q2011 (Will utilize third-party vendors until facility is completed.)</p>
Waste Resources	<p><u>Puente Hills Landfill</u> 13130 Crossroads Parkway South, Industry CA Gate Rate: \$38.26 per ton</p> <p><u>Sunshine Canyon Landfill</u> 14747 San Fernando Road, Sylmar Gate Rate: \$48.19 per ton</p> <p><u>Chiquita Canyon Landfill</u> 29201 Henry Mayo Drive, Castaic CA Gate Rate: \$39.00 per ton</p>	<p>Not included.</p>

Facilities (continued)

	RECYCLABLES FACILITIES	MIXED WASTE PROCESSING FACILITIES
Athens	<p><u>Potential Industries</u> 922 East Street, Wilmington, CA 90744. Revenue per ton: \$50 (based on market).</p> <p><u>Allan Company</u> 2411 Delaware Ave., Santa Monica, CA Revenue per ton: \$50.00 (based on market)</p>	<p><u>Athens Services MRF</u> 14048 Valley Blvd., City of Industry, CA. Anticipated recovery 35% to 45% Owned and operated by hauler.</p>
Crown	<p><u>Santa Monica Community Recycling Center</u> 2411 Delaware Ave., Santa Monica, 90404. Price per ton: \$45.</p> <p><u>Potential Industries</u> 922 East Street, Wilmington, CA 90744. Price per ton: \$45.</p> <p><u>Sun Valley Paper Stock</u> 11166 Pendleton St., Sun Valley, CA 91352. Price per ton: \$45.</p>	<p><u>Community Recycling Mixed MWS MRF</u> 9147 De Garmo Ave., Sun Valley, CA 91352. Price per ton: \$48. Owned and operated by sister company.</p>
Waste Management	<p><u>Smurfit Recycling</u> 20502 S. Denker Ave, Torrance, CA 90501. Revenue per ton: \$44.</p>	<p><u>WM Carson Transfer Station</u> 321 West Francisco St, Carson, CA Owned and operated by WM Price per ton: \$52.96</p> <p>Owned and operated by hauler.</p>
Waste Resources	<p><u>Smurfit Stone</u> 20502 S. Denker Street. Gate Rate: \$15.00 per ton</p>	<p><u>Waste Resources Recovery, Inc.</u> 357 W. Compton Boulevard, Gardena Owned and operated by WRI.</p>

Facilities (continued)

	C&D FACILITIES	GREEN WASTE FACILITIES/USES
Athens	American Waste Industries 11121 Pendleton St., Sun Valley, CA 91352. Price per ton: \$48. Estimated diversion: 80.9%. Owned and operated by hauler.	<u>Puente Hills Landfill</u> Per ton: \$19.95 Use: ADC Upon closure of Puente Hills in 2013, the hauler will start using the American Organics facility (20055 Shay Road, Victorville, CA 92394). Current price per ton: \$45. This facility is owned and operated by the hauler. SEE QUESTION #6
Crown	<u>Community Recycling C&D Facility</u> 11213 Randall Ave., Sun Valley, CA 91352. Price per ton: \$48. Owned and operated by sister company.	<u>Community Recycling Green Waste Processing Facility</u> 11300 Pendleton St., Sun Valley, CA 31652. Price per ton: \$41.75 Owned and operated by Crown's sister company. Use: ground and sent to compost facility in Lamont, CA. <u>Puente Hills Landfill</u> 13130 Crossroads Parkway, City of Industry, CA 91746 Price per ton: \$38.26 Use: ADC.
Waste Management	<u>Downtown Diversion</u> 2424 East Olympic Blvd, Building 3 Los Angeles, CA 90021. Owned and operated by hauler.	Transferred to facilities below through Carson Transfer Station, owned and operated by hauler. Price per ton: \$50.12 Sun Valley Recycling Park (Bradley Landfill) 9227 Tujunga Ave, Sun Valley, CA End use: compost, mulch, biomass feedstock or soil amendment Owned and operated by hauler. Agromin 5275 Colt Street, Ventura, CA End product: Soil amendments.
Waste Resources	<u>California Waste Services</u> 621 W 152 Street, Gardena Gate Rate: \$53.70 per ton	<u>Waste Resources Recovery, Inc.</u> 357 W. Compton Boulevard, Gardena Gate Rate: \$34.95 per ton Owned and operated by WRI.

Equipment

	COLLECTION VEHICLES	CART DESCRIPTION
Athens	Peterbilt collection vehicles, model year 2010 or newer. Roll-off and commercial spare: CNG Residential and commercial: CNG	Rehrig Pacific carts. 25% recyclable material.
Crown	All vehicles will be model year 2010, CNG or LNG, and manufactured by Autocar.	Rehrig Pacific Company: HuskyLite. Post consumer recyclable content no less than 30%. Colors of carts and lids to match what is currently used, unless the City prefers granite lid covers.
Waste Management	Residential and Commercial Route Vehicles: Mack (model year 2003). Roll-Off Truck: Autocar (model year 2009). All LNG.	Rehrig Pacific Company. 30% post-consumer re-grind content.
Waste Resources	LNG fuel, model years 2007-2010. Residential & Commercial Vehicles: Autocar. Roll-off Vehicles: International.	Rehrig Pacific carts. 30% recycled content.

	VEHICLE TRACKING SYSTEM	DESK SIDE RECYCLING CONTAINERS (TO BE PROVIDED AT COST TO BUSINESSES)	SPLIT BINS
Athens	Zonar V2J High-Definition GPS/ Vehicle Diagnostics System.	Rehrig Pacific, 7-gallon container. Cost: \$10/container.	No split bins offered.
Crown	GPS Insight - HD-3500 unit in all trucks.	Rehrig Pacific, 6-gallon. Cost: \$5.40/container	Split bins to be available in either 3 cubic yards (1.5 cubic yards per side) or 4 cubic yards (2 cubic yards per side) sizes. Rates shall be based upon the level of refuse service received (4 yard split bin at 2 yard refuse rate).
Waste Management	DRS x7 Armored (tablet) and Nexcom 6100 (brick and monitor) systems in all trucks. 3	Rehrig Pacific Company - 4-gallon bins with diamond-shaped cutouts. Cost: \$5 per container.	Proposes 2, 3 and 4 cubic yard sizes. Rates shall be based upon the level of refuse service received (4 yard split bin at 2 yard refuse rate).
Waste Resources	Teletrac tracking system.	Rehrig Pacific. 6-gallons. Cost: \$5.30 per container.	Not offered.

Optional Services

	DOOR-TO-DOOR HHW (OPTIONAL) - COST AND ADDITIONAL MATERIALS TO BE COLLECTED ABOVE RFP REQUIREMENT	PROCESSING OF ADDITIONAL BIN REFUSE (OPTIONAL SERVICE) - INCREASE IN BIN RATES
Athens	\$0.38 per dwelling unit per month. Annual cost of \$63,000.	Included at no additional charge. Anticipated recovery rate between 35% and 45%
Crown	Use of subcontractor (Curbside, Inc.). Collection program will include sharps (in a rigid sealed container). Cost: \$0.55 per month per home for single family and multi-family units. \$103,000 per year. Option to have a more limited (i.e. quarterly) program and pricing if the City is interested.	Included at no additional charge. Anticipated recovery rate 36%.
Waste Management	WMLA is in the process of purchasing Curbside, Inc., which will provide this service. Cost: \$0.40 per month per home for single family and multi-family units. \$78,000 per year	16% rate increase. Anticipates 20% to 25% recovery rate.
Waste Resources	\$60,000 per year. To be provided by third-party contractor.	10% rate increase. Anticipates 40% recovery rate.

Additional Information Requested in RFP

	SHARPS
Athens	Delivered by US mail. Mail-back program. Cost for containers above three per resident per year: \$65.00
Crown	Delivered to the door. Mail-back program. Cost for containers above three per resident per year: \$15.00
Waste Management	Delivered to the door. Mail-back program. Cost for containers above three per resident per year: \$27.50 If door-to-door HHW program is adopted, unlimited Sharps collection to be provided.
Waste Resources	Containers dropped of at, or mailed to, customers. Cost for containers above three per resident per year: start at \$38.50 for a one quart container (holds 42 3-cc syringes).

Additional Information Requested in RFP (continued)

	DISPOSAL COST COMPONENT ADJUSTMENT AND RATE CAPS	CAPACITY GUARANTEES
Athens	Disposal cost component to be adjusted by the change in the local CPI. Any increase to this component exceeding 5% per year will be rolled forward to a subsequent year. One-time rate adjustment for green waste of 5.5% for residential cart rates upon the closure of Puente Hills Landfill.	Guarantees 19,500 tons per year of Manhattan Beach residue per year for the seven-year term of the agreement at the Chiquita Landfill and provided a letter from the landfill owner.
Crown	First year rate adjustment waived. Processing costs for refuse, food waste and green waste to be adjusted by CPI. Disposal of processing residual to be adjusted subject to the change in Crown's actual average per ton disposal cost, capped at the dollar change in the Puente Hills Landfill gate rate. The proposer will consider negotiating a short-term cap with City, but no specific rate cap is being offered at this time.	Crown's sister company Community Recycling will guarantee capacity at its Sun Valley transfer station, MRF, organics facility, C&D and Lamont composting facility. (Crown and Community have the same owner and Crown has a processing agreement with Community).
Waste Management	Disposal/green waste rate adjustment factor: CPI for all urban consumers, all items less food and energy index (US city average).	Capacity guaranteed at WM Carson Transfer Station, Sun Valley Recycling Park (green waste), Agromin (green waste), Downtown Diversion (C&D) and at El Sobrante Landfill. Capacity also guaranteed for the food waste program using Reclaimable Anaerobic Composter.
Waste Resources	Disposal Cost to adjust by the percentage change in the average gate rate at the Puente Hills Landfill, California Waste Services, and WRI's Waste Resources Recovery facility.	Not offered.

Additional Information Requested in RFP (continued)

	PUBLIC EDUCATION STAFF HOURS PER YEAR (MULTI-FAMILY, COMMERCIAL & SCHOOLS)	ADDITIONAL RECYCLING AND TAKE-BACK PROGRAM SUPPORT
Athens	<p>Annual minimum time commitment:</p> <p>Multi-family recycling outreach program: 150 hours</p> <p>Commercial outreach program: 350 hours</p> <p>School outreach program: 500 hours</p> <p>Total annual hours: 1,000</p> <p>Will provide a full-time outreach staff member dedicated to the City.</p>	<p>Will work with local businesses to continue and improve existing take-back programs.</p> <p>Will recover and recycled textiles, synthetic and natural fiber carpet, and carpet padding collected on bin refuse routes. If this material does not fit in refuse containers, customers may call in for a bulky item pickup and material will be recycled.</p>
Crown	<p>Annual minimum time commitment:</p> <p>Multi-family recycling outreach program: 865 hours the first year, 220 each subsequent year.</p> <p>Commercial outreach program: 300</p> <p>School outreach program: 270 hours annually.</p> <p>Total annual hours: 1,435 the first year, 790 thereafter</p>	<p>Will work with local businesses through the Chamber of Commerce to identify opportunities.</p>
Waste Management	<p>Multi-family outreach: 400</p> <p>Commercial outreach: 600</p> <p>School outreach program: 500</p> <p>Total annual hours: 1,500</p> <p>WMLA proposes to continue working with Grades of Green to provide outreach to schools, as WMLA is the school district's current hauler.</p>	<p>Will work with community partners to develop shoe collection drives, textile collections and a costume recycling program.</p> <p>Will offer a one-year synthetic carpet recycling pilot program at no additional cost to collect carpet, up to 600 square feet, cut and rolled for collection by one driver. Can provide locked storage container at City yard for customer drop-off. After year, will discuss results and costs with City.</p> <p>Annual curbside re-use collection - once per year collection from residents of specified reusable items.</p> <p>Drop-off box at City yard for donations.</p> <p>WMLA will work with LA Shares to develop a website to assist in redistributing donations within the City to non-profits and schools.</p>
Waste Resources	<p>Minimum number of staff hours requested in Section V, #17 on page 26 of the RFP was not addressed.</p>	<p>Not addressed.</p>

Proposed Exceptions to Franchise Agreement

	NUMBER OF EXCEPTIONS	DESCRIPTION OF EXCEPTIONS TAKEN
Athens	None	None
Crown	None	None
Waste Management	6 initially requested, 4 accepted by City	<p>WMLA included the exceptions list below, in its proposal and requested additional language changes during the best and final phase. The City made revisions to the agreement in response to #1, #3, and #5 below, and an additional request limiting the requirement to recycle flocked holiday trees.</p> <ol style="list-style-type: none"> 1. <u>Section 2.9 Limitation of scope of franchise.</u> Requests that Bagster® service be clarified as outside the scope of the exclusive franchise agreement. 2. <u>Section 5.5 Extraordinary adjustments.</u> Requests elimination of language providing City with the sole discretion to reject an extraordinary rate request, and the City's ability to request certain supporting information. 3. <u>Section 10.4 Liquidated damages.</u> Requests that the wording requiring that containers be returned upright and with lids closed (sub-section 2.b) is changed to remove the requirement for the container lid to be closed, due to equipment limitations. 4. <u>Section 11.5 Assignment.</u> Requests that the requirement to submit a financial pro-forma not be applicable to a proposed assignment to an affiliate. 5. <u>Section 11.16 Compliance with municipal code.</u> Proposed change to the section wording to clarify that in the event of a conflict between the agreement and the municipal code, the agreement shall prevail. <p>WMLA requested clarification that a franchise fee, if implemented, would be calculated based on <u>receipts</u> from billings to customers.</p> <p>WMLA also clarified its understanding that the first year under which the diversion rate would be measured for potential application of liquidated damages under Section 10.4 would be calendar year 2012.</p>
Waste Resources	None	None

Legal Disclosures

	# OF LEGAL DISCLOSURES	SUMMARY OF LEGAL DISCLOSURES																
Athens	6	<p>OSHA facility inspections:</p> <table border="1"> <thead> <tr> <th>#</th> <th>Facility</th> <th>Citation Date</th> <th>Settlement</th> </tr> </thead> <tbody> <tr> <td>125918953</td> <td>Valley Blvd</td> <td>9/27/07</td> <td>\$1,150</td> </tr> <tr> <td>310196019</td> <td>Sun Valley</td> <td>6/29/07</td> <td>\$1,685</td> </tr> <tr> <td>309149268</td> <td>Sun Valley</td> <td>6/28/07</td> <td>Contested. No further inquiries.</td> </tr> </tbody> </table> <ol style="list-style-type: none"> 1. <u>SCAQMD</u> - Reached settlement 1/2009 for facility improvements, costs and fines regarding ongoing odor issues at its City of Industry facility (Athens MRF). 2. <u>City of Los Angeles</u> - Purchased American Waste Ind. Inc. in November 2006. American's Sun Valley MRF had CEQA issues. Company has obtained a temporary solid waste facility permit, cleaned up and resolved all issues and has obtained a solid waste facility permit. Indicates that company did not assume American's additional legal and regulatory issues. 3. <u>California Air Resources Board</u> - Athens entered into a settlement agreement in 2009 with the ARB for \$270,000. ARB asserted that Athens failed to properly inspect diesel vehicles in 2005 and 2006 and to install emission-reduction devices from 2004 to 2008. 	#	Facility	Citation Date	Settlement	125918953	Valley Blvd	9/27/07	\$1,150	310196019	Sun Valley	6/29/07	\$1,685	309149268	Sun Valley	6/28/07	Contested. No further inquiries.
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125918953	Valley Blvd	9/27/07	\$1,150															
310196019	Sun Valley	6/29/07	\$1,685															
309149268	Sun Valley	6/28/07	Contested. No further inquiries.															
Crown	1	<ol style="list-style-type: none"> 1. <u>Air Resources Board, 2007</u> - Crown was fined for failing to conduct diesel truck smoke tests in 2005 and 2006 and for failing to properly label a portion of its fleet with ARB-required labels. Settled. 																
Waste Management	5	<ol style="list-style-type: none"> 1. <u>USA Waste of California, Inc. v. Salinas Valley Solid Waste Authority, et al.</u> (2004) SVSCA leased the landfill property from USA Waste and operated the landfill, including financial assurance for closure and post-closure. At the end of the lease, SVSWA has not committed to undertake the closure and post-closure obligations. Settled. 2. <u>California EPA, DTSC, and California Regional Water Quality Control Board v. Azusa Land Reclamation, Inc.</u> (2005) Enforcement action related to allegedly unlawful receipt and disposal of unpermitted wastes. Settled. 3. <u>People of the State of California v. Sun Valley Hauling</u> (2006) Misdemeanor complaint regarding vehicle code violations concerning truck weight, registration, and oil leak. Inactive. 4. <u>Irwindale Partners LP v. United Rock Products Corporation and USA Waste of California, Inc.</u> (2007) City of Irwindale alleges that WM did not properly backfill 2 inert landfills operated by WM and/or did not meet current industry standards for backfilling. Active. 5. <u>USA Waste of California, Inc. v. City of Compton</u> (2008) Breach of contract action against Compton for unpaid amounts under franchise agreement and failure to return WM containers. Settled. 																
Waste Resources	0	N/A																

Unique Proposal Features

In addition to the recycling programs listed on page 4-11 under Additional Recycling and Take-Back Programs proposers offered the following enhancements:

Athens
<ol style="list-style-type: none"> 1. <u>Displaced Workers</u> - Athens will conduct a job fair for displaced workers and make offers of employment to those meeting company employment prerequisites. 2. <u>Quarterly waste characterization studies</u> - Athens will conduct quarterly residential waste characterization studies for residential cart refuse stream. RFP requires City-wide characterization studies, if requested by City, no more than once every two years. 3. <u>Compost Giveaways</u> - Twice per year, Athens will provide two 40-yard containers of compost at a location of the City's choosing. Residents may receive this compost at no cost, on a first-come-first-serve basis, using their own bags. 4. <u>Neighbor Safety Program</u> - Drivers observe and report any unusual or suspicious activities to assist law enforcement. 5. <u>Green Street Scene</u> - Will provide a web-based recycling program and educational tool to educate and distribute information. 6. <u>Full-Time Outreach Position for City</u> - Will provide a dedicated full-time employee to provide outreach and training services. 7. <u>Transition Office</u> - Will lease a store front or office in the City from March prior to start of service until June 2012 for customers to seek information and answers to questions, and to request and obtain carts. <p><u>Proposal Options:</u></p> <ol style="list-style-type: none"> 1. <u>Street Sweeping</u> - Athens offers to negotiate with City to provide street sweeping services. 2. <u>Permanent Food Waste Programs</u> - Will provide residential and commercial food waste programs for an additional cost.

Crown
<ol style="list-style-type: none"> 1. <u>Compost Giveaway</u> - Will provide residents with 300 free 30 pound bags or up to 100 cubic yards of half wood shavings/half compost per year, or a combination thereof, which Crown values at \$3,500 to \$5,000 depending upon whether the compost is requested in bulk or bagged. The service would be provided at no additional charge. 2. <u>School Compost Give-a-Way</u> - Will provide compost for school district gardens at no additional charge. 3. <u>Citywide Residential Food Waste Program</u> - Food waste will be collected from residential customers at no additional charge. 4. <u>Citywide Restaurant Food Waste Program</u> - Food waste will be collected from food waste generating businesses at no additional charge. 5. <u>Processing of Residential Refuse</u> - Will process all residential refuse at no additional charge. 6. <u>Annual Waste Stream Analysis</u> - Will perform an annual waste stream analysis in order to identify all components of the residential and commercial waste stream, in order to help direct all education and outreach efforts in order to increase awareness and enhance participation in all recycling programs. RFP requires similar assistance upon City request no more than every other year. 7. <u>First Year Rate Freeze</u> - Will waive the July 1, 2012 rate adjustment.

Unique Proposal Features (continued)**Waste Management**

1. Textile recycling and re-use programs - Programs will include annual residential curbside re-use collection, locked donation drop off bin at the City yard (requiring City assistance), a shoe donation program and a Halloween costume recycling program, all at no additional charge.
2. Shred event - WM will offer a "shred it" event to businesses at no additional charge.
3. Carpet recycling (pilot program) - One-year pilot program to be offered in partnership with The Carpet Recyclers (La Mirada, CA). Synthetic carpets accepted.
4. Residential Recycling Rewards (clean cart challenge) - During three months of each year that this rewards program is in place, WM crews will randomly assess customers' bins and offer on-the-spot recycling rewards to owners of carts and bins with less than 5% contamination. Program would be periodically reviewed by parties to see if it will be continued.
5. Grant Assistance - Will provide grant assistance, to include seeking, writing, managing and reporting of grant funds, at no additional cost.
6. Manhattan Beach Middle Management Program ("MBMMP") - WMLA offers to continue support of MBMMP, indicating past assistance with beach cleanups and composting classes, and donations of supplies such as gloves, bags and give-a-ways.
7. School District Support - WMLA is the current hauler for the MBUSD and already provides, and will continue to provide, this customer with support. WMLA offers to provide reusable School Lunch Kits for Kindergarteners, at an estimated annual cost of \$16,000.
8. Large Venue and Event Recycling - Will assist community organizations with recycling plans for events to maximize diversion. Will provide temporary use of up to 50 reusable trash and recycling stations for events at any one time, at no additional cost. These are the event boxes that have been used at City events for two years.
9. Waste Watch - Offers to work with local authorities to report unusual or suspicious behavior.
10. Composting Classes - Offers to host two additional composting classes per year, for a total of five, free-of-charge. RFP required three per year.
11. Free LEED Consulting Services - To be provided to customers.
12. Ethisphere Honor - Think tank Ethisphere honored Waste Management as one of the "World's Most Ethical Companies."
13. Incumbent - As incumbent, WMLA can implement new programs sooner.
14. Re-Use Database - The company LA Shares maintains a website to redistribute donated materials to non-profits and schools in the City of Los Angeles. WMLA plans to work with this company to establish a similar website for Manhattan Beach as a one-year pilot program.

Alternative Proposals

1. Offers to negotiate to provide street sweeping services.
2. Offers a residential rate reduction for continued use of existing carts.
3. Offers to provide an HHW drop-off kiosk and to develop a commercial HHW program for an additional charge.
4. Offers "Bagsters," which can be used in place of temporary bins, can be picked up by the customer so that that customer does not need to schedule delivery of a container, and can be collected at any time without rental fees, which accrue on standard bins after seven days without a pickup.

Waste Resources

1. Waste Resources Recovery's Affiliated Company's Conversion Technology Project - Plans to develop a conversion technology facility to convert solid waste to Syngas at the Waste Resources Recovery, Inc. facility in Gardena. The facility is expected to be operational by January of 2013.
2. Customer Service - Customer service line will be answered by a live person, not a recording, and call will be answered within 4 rings.
3. Recycled Content Bins - Will provide requesting customers with 30% recycled content plastic commercial bins (2 to 4 cubic yard sizes).

Alternate Proposals

1. Encroachment Permit - Permits may be obtained by WRI for customers. Costs will be passed onto customers, including City fees
2. Public/Private Partnership - Included an alternate proposal for a public/private partnership between the City and WRI to provide and manage collection services, and provides for profit sharing with the City.

CITY OF MANHATTAN BEACH
SUMMARY OF KEY SERVICES AND CONTRACT TERMS
REQUESTED IN RFP

I. SERVICES

A. Residential Cart Services

- One time per week, automated collection.
- Rate based upon size and number of refuse cart. 96, 64 or 32-gallon cart sizes available.
- One automated 96, 64 or 32-gallon recycling cart. If requested. Additional carts may be requested at no charge.
- One automated 96, 64 or 32-gallon green waste cart. If requested. Additional carts may be requested at no charge.
- Composting bins available upon request.
- Backyard service for disabled at no additional charge.

B. Residential Bin and Commercial Collection Services

- Bin refuse collection for residential customers not receiving cart service, and commercial customers.
- 96, 64 or 32-gallon commercial cart or 30-gallon commercial can service available to businesses as an alternative to bin service.
- Recyclables collection for residential bin and commercial customers at no additional charge.
- Mixed waste processing of 1,365 tons of commercial bin waste.
- Roll-off box and temporary bin services, excluding construction and demolition debris collection, which is not currently exclusive under this agreement.
- Scout vehicle service to position hard-to-access bins for collection at no additional charge.
- Bin pushout service to move bins into position for collection at no additional charge.
- Locking bin service for a fee.
- Bin cleaning provided once per year at no additional charge. A fee may be charged for additional cleanings.

C. Special Services

- On-call bulky item collection for all residential customers at no additional charge for up to three pickups per year, and for commercial customers at a fee.
- Holiday tree collection from all residential customers starting December 25 and ending the second Saturday in January provided at no additional charge.
- Residential and commercial food waste diversion six-month pilot programs.

D. City Services - provided at no additional charge

- Refuse, recyclables and green waste collection from City facilities, including street and park litter containers.
- Refuse and recyclables collection from City-sponsored events.
- Hazardous waste collection at City facilities.
- Abandoned item collection.
- Residential sharps collection container distribution.

II. CONTRACT TERMS

A. Term of Contract

Seven years, with a City option to extend the agreement for two additional years.

B. Education & Public Awareness

Proposers were asked to propose a minimum number of hours that proposers would dedicate to multi-family, school, and commercial public outreach efforts.

C. Faithful Bond Performance

Contractor is required to provide a \$500,000 performance bond.

D. Audits

Contractor funding of audits, up to \$80,000 for the first year audit and up to \$50,000 for each subsequent biennial audit.

E. Minimum Recycling Requirements

Proposers are asked to propose a diversion rate and document how they will achieve that rate. Proposed diversion rate is to be at least 44% or higher.

F. Cart Ownership and Distribution

Carts and cans distributed under the agreement become property of the City. Contractor is required to replace all existing residential carts at the start of service.

G. Vehicles

All route collection vehicles will be no older than 10 years old, use natural gas, and contain a GPS tracking system that allows the City to access vehicle locations online.

H. Fees

- Contracting Cost Reimbursement – One-time \$120,000 to be paid upon award of contract for costs associated with the development and award of this franchise.
- Funding of City Recycling Needs – Contractor will provide City with \$28,000 on July, 1, 2011 to support the City's recycling programs. This amount will increase by \$1,000 each year.

I. Billing

City will bill for all services, except roll-off box and temporary bin services.

J. Rate Adjustment Method

Rates are adjusted annually based on indices representing costs of labor, fuel, equipment, disposal and other costs. Proposers were provided an opportunity to propose a method to adjust the disposal component and/or offer future rate increase limitations.

III. OPTIONAL SERVICES

A. Door-to-Door Residential HHW Collection

City will have option to implement a door-to-door household hazardous waste collection program to single and multi-family customers for an additional fee to be proposed.

B. Mixed Waste Processing of All Bin Waste

City will have the option to request that the contractor process additional bin waste to recover a higher quantity of recyclables for an addition cost to be proposed. RFP requires only a portion of the bin waste to be processed.

C. Construction and Demolition Debris Collection

City has option to require hauler to exclusively collection construction and demolition debris after December 2014 for proposed rates, with a minimum diversion rate of 70%. Currently, collection of this waste is not exclusive to the franchise hauler.

City of Manhattan Beach Proposed Rates - 7-Year Rate Revenue Projection - Excluding Optional Services

Rate Effective	Athens ⁽¹⁾				Athens w/Food Waste ⁽¹⁾				Crown ⁽²⁾				Waste Management - Existing Carts ⁽³⁾				Waste Management - New Carts ⁽³⁾			
	Service	Disposal/ Green Waste/ Processing ⁽⁵⁾	Transform- ation	Annual Revenue	Service	Disposal/ Green Waste/ Organics/ Processing	Transform- ation	Annual Revenue	Service	Disposal of Residual	Transform- ation	Annual Revenue	Service	Disposal/ Green Waste/ Processing	Transform- ation	Annual Revenue	Service	Disposal/ Green Waste/ Processing	Transform- ation	Annual Revenue
Initial Weightings (5)	52%	44%	4%	100%	52%	44%	4%	100%	81%	12%	7%	100%	59%	40%	1%	100%	59%	40%	1%	100%
7/1/2011	\$1,479,920	\$1,252,240	\$113,840	\$2,846,000	\$1,553,760	\$1,314,720	\$119,520	\$2,988,000	\$2,468,070	\$365,640	\$213,290	\$3,047,000	\$1,944,050	\$1,318,000	\$32,950	\$3,295,000	\$2,026,650	\$1,374,000	\$34,350	\$3,435,000
7/1/2012	\$1,524,318	\$1,289,807	\$119,532	\$2,933,657	\$1,600,373	\$1,354,162	\$125,496	\$3,080,031	\$2,468,070	\$365,640	\$213,290	\$3,047,000	\$2,002,372	\$1,357,540	\$34,598	\$3,394,510	\$2,087,450	\$1,415,220	\$36,068	\$3,538,738
7/1/2013	\$1,570,048	\$1,328,501	\$125,509	\$3,024,058	\$1,648,384	\$1,394,787	\$131,771	\$3,174,942	\$2,542,112	\$365,640	\$223,955	\$3,131,707	\$2,062,443	\$1,398,266	\$36,328	\$3,497,037	\$2,150,074	\$1,457,677	\$37,871	\$3,645,622
7/1/2014	\$1,617,149	\$1,469,813 (4)	\$131,784	\$3,218,746	\$1,697,836	\$1,436,631	\$138,360	\$3,272,827	\$2,618,375	\$402,204	\$235,153	\$3,255,732	\$2,124,316	\$1,440,214	\$38,144	\$3,602,674	\$2,214,576	\$1,501,407	\$39,765	\$3,755,748
7/1/2015	\$1,665,663	\$1,513,908	\$138,373	\$3,317,944	\$1,748,771	\$1,479,730	\$145,278	\$3,373,779	\$2,696,926	\$438,402	\$246,911	\$3,382,239	\$2,188,045	\$1,483,420	\$40,051	\$3,711,516	\$2,281,013	\$1,546,449	\$41,753	\$3,869,215
7/1/2016	\$1,715,633	\$1,559,325	\$145,292	\$3,420,250	\$1,801,234	\$1,524,122	\$152,542	\$3,477,898	\$2,777,834	\$477,858	\$259,257	\$3,514,949	\$2,253,686	\$1,527,923	\$42,054	\$3,823,663	\$2,349,443	\$1,592,842	\$43,841	\$3,986,126
7/1/2017	\$1,767,102	\$1,606,105	\$152,557	\$3,525,764	\$1,855,271	\$1,569,846	\$160,169	\$3,585,286	\$2,861,169	\$516,087	\$272,220	\$3,649,476	\$2,321,297	\$1,573,761	\$44,157	\$3,939,215	\$2,419,926	\$1,640,627	\$46,033	\$4,106,586
Total	\$11,339,833	\$10,019,699	\$926,887	\$22,286,419	\$11,905,629	\$10,073,998	\$973,136	\$22,952,763	\$18,432,556	\$2,931,471	\$1,664,076	\$23,028,103	\$14,896,209	\$10,099,124	\$268,282	\$25,263,615	\$15,529,132	\$10,528,222	\$279,681	\$26,337,035

Service Component Increase and CPI Assumptions - all haulers: 3%

Table 1

All Haulers SERRF Rate Component Increase Assumption	
Year	Increase
2011	n/a
2012	5%
2013	5%
2014	5%
2015	5%
2016	5%
2017	5%

Table 2

Crown Disposal Puente Hills Gate Rate	
Year	Increase
2011	n/a
2012	0%
2013	0%
2014	10%
2015	9%
2016	9%
2017	8%

- (1) Athen's disposal component adjustment based on change in CPI, or 5% whichever is lower. Disposal component adjustment cap includes green waste, with the exception of an increase to the residential rates upon closure of the Puente Hills Landfill. See footnote (4).
- (2) Crown waived 7/1/12 rate adjustment. Crown's disposal residue component adjustments based on the actual change in disposal cost, capped at the dollar change in the Puente Hills gate rate (Table 2). Estimated disposal increase is assumed to be the projected increase in the Puente Hills gate rate.
- (3) Waste Management's disposal component adjustment based on change in CPI, or 5%, whichever is lower.
- (4) Athens' 7/1/14 rate adjustment reflects a one-time increase to green waste processing costs due to Puente Hills Landfill ceasing to accept green waste as alternative daily cover upon closure. This one-time adjustment does not apply if the food waste program is implemented. The calculation assumes residential rate revenue is 61% of total rate revenue (based upon proposed first-year revenue relationship), and a 5.5% increase to these rates per contract, plus annual CPI adjustment.
- (5) Initial weightings are based upon Athens', Crown's, and WMLA's draft agreements.

City of Manhattan Beach

Proposed Rates - 7-Year Rate Revenue Projection - With Optional HHW Program and Processing of All Bin Waste

Rate Effective	Athens ⁽¹⁾				Athens w/Food Waste ⁽¹⁾				Crown ⁽²⁾				Waste Management - Existing Carts ⁽³⁾				Waste Management - New Carts ⁽³⁾			
	Service	Disposal/ Green Waste/ Processing ⁽⁵⁾	Transform- ation	Annual Revenue	Service	Disposal/ Green Waste/ Organics/ Processing	Transform- ation	Annual Revenue	Service/ Processing	Disposal of Residual	Transform- ation	Annual Revenue	Service	Disposal/ Green Waste/ Processing	Transform- ation	Annual Revenue	Service	Disposal/ Green Waste/ Processing	Transform- ation	Annual Revenue
Initial Weightings ⁽⁵⁾	52%	44%	4%	100%	52%	44%	4%	100%	81%	12%	7%	100%	59%	40%	1%	100%	59%	40%	1%	100%
7/1/2011	\$1,512,680	\$1,279,960	\$116,360	\$2,909,000	\$1,586,520	\$1,342,440	\$122,040	\$3,051,000	\$2,551,500	\$378,000	\$220,500	\$3,150,000	\$2,084,470	\$1,413,200	\$35,330	\$3,533,000	\$2,167,070	\$1,469,200	\$36,730	\$3,673,000
7/1/2012	\$1,558,060	\$1,318,359	\$122,178	\$2,998,597	\$1,634,116	\$1,382,713	\$128,142	\$3,144,971	\$2,551,500	\$378,000	\$220,500	\$3,150,000	\$2,147,004	\$1,455,596	\$37,097	\$3,639,697	\$2,232,082	\$1,513,276	\$38,567	\$3,783,925
7/1/2013	\$1,604,802	\$1,357,910	\$128,287	\$3,090,999	\$1,683,139	\$1,424,194	\$134,549	\$3,241,882	\$2,628,045	\$378,000	\$231,525	\$3,237,570	\$2,211,414	\$1,499,264	\$38,952	\$3,749,630	\$2,299,044	\$1,558,674	\$40,495	\$3,898,213
7/1/2014	\$1,652,946	\$1,502,350	\$134,701	\$3,289,997	\$1,733,633	\$1,466,920	\$141,276	\$3,341,829	\$2,706,886	\$415,800	\$243,101	\$3,365,787	\$2,277,756	\$1,544,242	\$40,900	\$3,862,898	\$2,368,015	\$1,605,434	\$42,520	\$4,015,969
7/1/2015	\$1,702,534	\$1,547,421	\$141,436	\$3,391,391	\$1,785,642	\$1,510,928	\$148,340	\$3,444,910	\$2,788,093	\$453,222	\$255,256	\$3,496,571	\$2,346,089	\$1,590,569	\$42,945	\$3,979,603	\$2,439,055	\$1,653,597	\$44,646	\$4,137,298
7/1/2016	\$1,753,610	\$1,593,844	\$148,508	\$3,495,962	\$1,839,211	\$1,556,256	\$155,757	\$3,551,224	\$2,871,736	\$494,012	\$268,019	\$3,633,767	\$2,416,472	\$1,638,286	\$45,092	\$4,099,850	\$2,512,227	\$1,703,205	\$46,878	\$4,262,310
7/1/2017	\$1,806,218	\$1,641,659	\$155,933	\$3,603,810	\$1,894,387	\$1,602,944	\$163,545	\$3,660,876	\$2,957,888	\$533,533	\$281,420	\$3,772,841	\$2,488,966	\$1,687,435	\$47,347	\$4,223,748	\$2,587,594	\$1,754,301	\$49,222	\$4,391,117
Total	\$11,590,850	\$10,241,503	\$947,403	\$22,779,756	\$12,156,648	\$10,286,395	\$993,649	\$23,436,692	\$19,055,648	\$3,030,567	\$1,720,321	\$23,806,536	\$15,972,171	\$10,828,592	\$287,663	\$27,088,426	\$16,605,087	\$11,257,687	\$299,058	\$28,161,832

Service Component Increase and CPI Assumptions - all haulers: 3%

Table 1

All Haulers SERRF Rate Component Increase Assumption	
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(5) Initial weightings are based upon Athens', Crown's, and WMLA's draft agreements.



November 11, 2010

City of Manhattan Beach
City Clerk
1400 Highland Avenue
Manhattan Beach, CA 90266

Dear City Clerk:

Thank you for the opportunity to participate in the City of Manhattan Beaches RFP process for waste collection and recycling services. We appreciate the city's diligence in its quest to find a company that will meet and exceed the city's waste collection and recycling expectations. This package includes all of the areas that you asked for regarding specifications or changes in the proposed contract. In addition to those additional services, we were asked to respond to some "blog" information that provides misinformation and absolute falsehoods. We are not typically asked to respond to information disseminated about our company from anonymous sources, but we are happy to reply in this instance because we are confident our response will provide the city a more accurate representation of Athens Services.

The information the city received was garnered from a website that claims to be maintained by, "Montebello Residents for Honest Government." This website is actually maintained by the main consultant to several of our waste company competitors. As would be expected of a website constructed and maintained by industry competitors, under the guise of a grassroots group of concerned citizens, the website is replete with inaccurate and blatantly false information about Athens Services. It is most unfortunate that competitors and special interest can take a "free shot" via this horrible website which demonstrates truly the worst the internet has to offer. The owners of Athens Services have built a tremendous value add company based on family values and service, both to our customers and employees. Athens demonstrates to all of our contracted cities these values on a daily basis, and when asked, each city will give us the highest regards for our attention to detail and service model. Most important is that our partner City's Staff and Elected Officials are reminded that they made the right decision by selecting Athens as their waste hauler and landfill avoidance business partner. Following are some examples of the erroneous information disseminated to you by the anonymous party or parties:

The website states, under a heading "Montebello Superfund Site," that Athens operated one of the region's worst landfills, now a major federal Superfund cleanup site, while doing business as the "Operating Industry" company. This statement is false. Athens has never done business as "Operating Industry Company," owned any such entity, nor played any role whatsoever in the operation of the so-called "Montebello Superfund Site." Rather, the site was operated for years as a mining related venue, later opened as a landfill in 1948 by the City of Monterey Park and a

private operator, subsequently taken over by Operating Industries, Inc., and eventually shut down and labeled a Superfund Site. Jack Arakelian had a partnership interest in Operating Industries in the early 1970's. Jack Arakelian never had any ownership of Arakelian Enterprises dba Athens Services, nor did Athens Services take waste to this facility.

The website refers to antitrust allegations. This case dates back over 23 years to an alleged incident between one of our senior executives at the time, and another business associate. Our firm chose to enter a no contest plea, not admitting any wrongdoing but not contesting the allegations in a public forum. As such, and since that incident there have been no violations and Athens Services has a spotless record versus the majority of our competitors in the industry.

The website further states, under the heading "Operational Safety Violations," that OSHA has cited Athens for illegally forging a CHP officer's signature of "scores of fake vehicle repair certifications" and further lists a host of other serious safety violations attributable to Athens. It even purports to cite to a Los Angeles Times story to corroborate the allegations. In reality, the cited article indicated West Covina Disposal, not Athens, was the operator who committed such acts -- a completely separate company which, at the time, Athens was not affiliated with in any fashion. Indeed, in part to try and solve these very problems, which the website accuses Athens of committing, the City of West Covina later worked with Athens to take over the waste hauling contracts at issue in order to remedy this situation. Indeed, Athens still has a contract with the City of West Covina and we have a very good working relationship with and positive reputation in the city, which we are confident both city staff and council will verify.

The website additionally cites, under the heading "Environmental Violations," various SCAQMD violations. Athens' state of the art materials recycling facility utilized a series of highly innovative technologies that initially created various issues, but such temporary problems were remedied in full and the issues abated. The reason for these temporary issues and problems was twofold: one, the design, construction, and utilization of a groundbreaking and state of the art materials recycling facility created a host of new challenges for Athens and its team. Second, such issues may have been minor indeed but for the efforts of a plaintiff's class action firm that utilized a "phone tree" for the surrounding citizens to constantly call the SCAQMD to claim the presence of various "odors" in the area and alleged resulting "harm" to the community. Based in large part on these complaints, Notices of Violation were routinely issued based on such simple calls and complaints without any form of environmental or scientific testing. As to the multiple Notices of Violations, those were almost entirely created by a small group of residents that sued Athens and then routinely called the SCAQMD in the hopes of adding some validity to their lawsuit – and, with no testing or environmental equipment of any kind, the SCAQMD would often issue the notices based solely on such calls. Our last Notice of Violation of this type was received in October of 2007. These NOV's and the lawsuit were later remedied and dismissed following an inspection of the facility by a panel of AQMD officials. Since that time our MRF has been operating virtually NOV free and the SCAQMD issues have also been fully resolved. A very important point here is that some of the equipment purchased and installed was later found to be defective and the contractor and manufacturer of the equipment took responsibility for

correcting those issues. The Athens Material Recovery Facility (MRF) is a fully enclosed facility that employs the most technologically advanced environmental impact mitigations. It is the highest diverting mixed waste MRF in California and we invite Manhattan Beach Staff, City Council and Residents to tour the facility at any time to form their own opinion.

Finally, with respect to our company's reputation- Athens Services has provided exemplary waste collection and recycling services to cities throughout Southern California for 50 years. The allegations regarding political manipulation and pricing are absolutely false. We have exclusive contracts in 18 cities, some dating back to the 1960's. Our reputation for providing consistently excellent service at highly competitive rates has earned us the trust of these communities to continually meet and exceed ever-more stringent AB 939 mandates. Our long history of community involvement and philanthropy has solidified positive relationships in each of our stakeholder communities as we are confident will be verified through our references. This should address your questions regarding the stopathens.org website. The balance of your information is attached to this cover letter.

Unfortunately we cannot control internet postings or anonymous information disseminated to cities about our company. However, because of our proven record of being an industry leader with respect to service, innovation and community support, we are confident our well-earned, positive reputation continues to be the standard by which we are judged in our communities and our industry. Athens Services will add value to your community so both City Staff and Elected Officials can focus on the Mission, Goals, and Objectives while implementing your daily action plans.

Again, thank you for the opportunity to participate in the city's process. We believe Athens Services is the right choice for Manhattan Beach. Please check our references and you will see that we provide stellar service at every level, and we are proud to represent the "Athens Advantage". If I may provide any additional information please do not hesitate to contact me at (626) 934-4619.

Sincerely,

Gary Clifford,
Chief Operating Officer
Athens Services

**PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT**

Lorelei H. Oviatt, AICP, Director

2700 "M" STREET, SUITE 100
BAKERSFIELD, CA 93301-2323

Phone: (661) 862-8600

FAX: (661) 862-8601 TTY: Relay 1-800-735-2829

E-Mail: planning@co.kern.ca.us

Web Address: www.co.kern.ca.us/planning



DEVELOPMENT SERVICES AGENCY

Ted James, AICP, DSA DIRECTOR

Administrative Operations
Engineering, Surveying and Permit Services
Planning and Community Development
Roads

October 4, 2010

File: CUP #27, Map #143

PPO9210

Community Recycling & Resource Recovery
Attention: Dave Baldwin
1261 N. Wheeler Ridge Road; P.O. Box 715
Lamont, CA 93241

RE: Status of existing Community Recycling and Resource Recovery, Inc., green-waste composting facility (authorized by Conditional Use Permit No. 27, Map No. 143) located at 1261 North Wheeler Ridge Road, approximately two miles south of Lamont (APN: 185-350-53, 54 & 55).

Dear Mr. Baldwin,

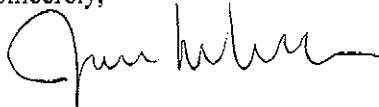
You recently requested that this Department prepare a letter which reiterates the current status of the Community Recycling and Resource Recovery facility located on North Wheeler Ridge Road. As previously indicated to you, the project was last considered by at the Board of Supervisors hearing on July 13, 2010. Upon closing of public testimony, the Board made the decision to refer the project back to the Planning and Community Development Department for the preparation of an Environmental Impact Report (EIR) with the baseline to be determined by Staff in accordance with CEQA. The Board of Supervisors also decided the CRRR facility could continue to operate while the EIR was being prepared, under the following conditions:

- a. Items not specifically listed in the July 13, 2010 Staff Report under Table 1 "Existing Category Descriptions and Tonnage" (as listed below) shall no longer be taken after October 13, 2010;
- b. The facility shall operate according to the conditions of approval for Resolution 72-93 (as most recently modified in 2000). Specifically, the receipt of City of Los Angeles residential food waste shall cease by October 13, 2010;
- c. Table 1 "Existing Category Descriptions and Tonnage" shall be amended to include the City of Arvin's residential food waste diversion program and any other Kern County residential food waste diversion program as a permitted feedstock, not to exceed the tonnage limitations already listed in the Table;

Since the July 13, 2010 Board hearing, Community Recycling and Resource Recovery, Inc. has stated to Kern County that they have ceased acceptance of residential food waste materials from any generator outside of Kern County. Additionally, Community Recycling has been directed to operate pursuant to the parameters shown in Table 1, as listed below, with the addition of wording to include institutional food waste as an authorized use under the existing CUP. It is also noted that this Department has determined that the composting facility will be allowed to de-trash feedstocks to remove potentially fugitive plastic materials and other non-compostable materials and bail the potentially fugitive plastics for beneficial reuse.

CRRR is currently working with this Department toward preparation of an Environmental Impact Report for the authorization of the existing composting facility, expanded uses at the existing facility, preparation of a Specific Plan for the composting facility and additional industrial development on adjacent parcels, a general plan amendment and zone change for new industrially designated land, and a precise development plan and conditional use permit for industrial uses. As noted above, CRRR may continue to operate pursuant to Table 1 during the current application process. Should you have any questions, please do not hesitate to contact me at (661) 862-8619 or KitchenJ@co.kern.ca.us.

Sincerely,



Jacquelyn Kitchen, Planner III
Advanced Planning Division

Cc: WZI, Inc.
Attention: Mary Jane Wilson
1717 28th Street
Bakersfield, CA 93301

Lamont Public Utilities District
8624 Segrue Road
Lamont, CA 93241

San Joaquin Valley Air Pollution Control District
Attn: Michael Buss, Permit Services
34946 Flyover Court
Bakersfield, CA 93308-9725

Table 1
Maximum Individual Daily Intake of Each Material

Description	Daily Tons	Additional Notes
Green Materials, Produce Materials, Soiled paper/sorted biomass, Pre-Consumer Produce Products, Packing Shed Materials, Street Sweeping Organics, and Wholesale/Retail food process materials. Residential Mixed food/green waste only from Kern County communities. Institutional food waste and green waste.	3500	<ul style="list-style-type: none"> • Trimmings from residences & businesses that include grass clippings, tree trimmings, wood and wood fines, etc. • Soiled pre- and post-consumer paper products (including but not limited to sticks, ice cream cartons, retail packaging, etc.). • Discarded trimmings and spoiled fruits/vegetables from retail and warehouse distribution centers. • Trimmings and cull fruits/vegetables from packing sheds. • Liquid, semi-solid and solid agricultural, wholesale/retail food process (including institutional food diversion) and residuals.
Cow Manure	250	
Amendments/Additives for Compost product and/or Soil (Commercial)	-	Gypsum, Fertilizer, Dolomite, Humates, Sulfur. No biomass ash.
LPUD Wastewater treatment plant sludge	Once every 7-10 years	Sewage Sludge from LPUD only.
Total Intake:	3750	

**PLANNING AND COMMUNITY
DEVELOPMENT DEPARTMENT**

Lorelei H. Oviatt, AICP, Director

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DEVELOPMENT SERVICES AGENCY

Ted James, AICP, DSA DIRECTOR

Administrative Operations
Engineering, Surveying and Permit Services
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Roads

October 19, 2010

**File: Conditional Use Permit No. 27
Map No. 143**

Board of Supervisors
Kern County Administrative Office
1115 Truxtun Avenue
Bakersfield, CA 93301

**Status Report on progress of Community Recycling and Resource Recovery, Inc. for
compliance with Board decision on July 13, 2010
(Fiscal Impact: None) SD #2**

This is a status report on the progress of Community Recycling and Resource Recovery, Inc. on compliance with your Board decisions on July 13, 2010 regarding the continued operation of the facility. The existing site is currently developed with a green-waste collection and composting facility that has been operated by Community Recycling and Resource Recovery, Inc., since 1993. Existing development consists of four composting areas, processed compost stockpile areas, feedstock screening areas, and the associated office space, and a truck tire pressure washing area.

At the July 13, 2010 hearing your Board referred the project for modification of the permit back to Staff for the preparation of an Environmental Impact Report and declined to revoke the conditional use permit and allowed the applicant to continue operating under the following conditions:

1. Items not specifically listed in the July 13, 2010 Staff Report under Table 1 "Existing Category Descriptions and Tonnage" shall no longer be taken after October 13, 2010,
2. The facility shall operate according to the conditions of approval for Resolution 72-93 (as most recently modified in 2000). Specifically, the receipt of City of Los Angeles residential food waste shall cease by October 13, 2010;
3. Table 1 "Existing Category Descriptions and Tonnage" shall be amended to include the City of Arvin's residential food waste diversion program and any other Kern County residential food waste diversion program as a permitted feedstock, not to exceed the tonnage limitations already listed in the Table;
4. Community Recycling and Resource Recovery shall submit a project description which includes any proposed changes to the application and shall remit all necessary fees and EIR deposits as deemed necessary by the Planning and Community Development Department to start preparation of an EIR by October 13, 2010. The applicant shall also participate in providing timely responses for the completion of the EIR for a public hearing before the Board Of Supervisors within 18 Months.

October 19, 2010

Page 2

During the Hearing, your Board also requested that the Planning and Community Development Department prepare a status update on October 19, 2010 to report on the progress of the project.

After the July 13, 2010 Board of Supervisors hearing, Staff sent letters to the affected parties, including the applicant, the City of Los Angeles, and the City of Arvin. The letters stated that Community Recycling would be required to prepare an Environmental Impact Report and process a new conditional use permit for the existing composting facility and any planned expansions and that, in the interim, the facility would not be permitted to accept residential food waste from any generator outside of Kern County. On July 15, 2010, the applicant also sent a letter to Mr. Alex Helou, the Assistant Director of the City of Los Angeles Bureau of Sanitation. The letter from the applicant reiterated the fact that the CRRR facility had been directed to stop receiving residential green/food waste from the City of Los Angeles by October 13, 2010.

On August 26, 2010, this Department received a letter from the applicant stating their intent to move forward with an EIR for the existing facility. The applicant also submitted the necessary funds for a deposit on preparation of the EIR. The letter also included a revised version of Table 1, which included a statement that the food-wastes which had previously been permitted under the "packing shed/produce/green materials" categories included institutional food diversion from public facilities such as schools and correctional institutions. Staff concurs that this added language is consistent with the parameters of the permit, as it was last approved in 2000. A revised Table 1 is attached which lists the parameters that your Board authorized the applicant to operate under while the EIR and new permits are being processed.

On September 23, 2010, the Planning and Community Development Department contacted the Los Angeles Bureau of Sanitation to inquire about the status of their contract with CRRR. On October 4, 2010, that Agency indicated that while they were still shipping residential food-waste to the Kern County CRRR facility, the shipments were scheduled to cease on or before October 13, 2010 as mandated by your Board. Staff recently discovered that the City of San Fernando is also conducting a residential food waste program and sending the waste to CRRR. Staff confirmed this program with the applicant and the applicant has provided a written letter stating that they will no longer accept residential food waste materials from any generator outside of Kern County, including the City of Los Angeles and the City of San Fernando, after October 13, 2010. Staff has contacted the Public Works Director, Ron Ruiz, for the City of San Fernando and has notified Mr. Ruiz that CRRR does not have land use approval to accept residential food waste from that jurisdiction and that all deliveries to CRRR must cease by October 13, 2010. Mr. Ruiz has contacted the City's contracted hauler, Crown Disposal, and has verified with them that the operations will cease as of October 13, 2010.

Staff has met with the applicant to discuss the project description and next steps in processing. Staff is working with the applicant on a formal project description for the full extent of requests for the CRRR project facility, retaining an EIR consultant and completion of necessary contracts. With the exception of the City of San Fernando residential waste program CRRR is in full compliance with your

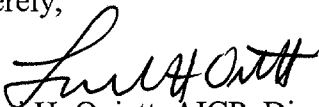
October 19, 2010

Page 3

Board direction. Staff requests your Board direct CRRR to immediately cease acceptance of the City of San Fernando residential food scrap program and continue to participate in providing timely responses for the completion of the EIR for a public hearing before the Board Of Supervisors within 18 Months.

IT IS THEREFORE RECOMMENDED that your Board receive and file this report; direct Community Recycling and Resource Recovery to immediately cease acceptance of the City of San Fernando residential food scrap and continue to participate in providing timely responses for the completion of the EIR for a public hearing before the Board Of Supervisors within 18 Months.

Sincerely,



Lorelei H. Oviatt, AICP, Director
Planning and Community Development Department

LHO:JRK;jb

I:\adm\jvb\board.ltr\Comm Recycle Status Rpt.ltr

cc: County Administrative Office
County Counsel
Community Recycling and Resource Recovery
Citizens for a Better Arvin
Center on Race, Poverty and Environment
Development Services Agency
Grand Jury

sgvtribune.com

Athens backs lawsuit in attempt to stop competitive bidding in Monterey Park, officials say

By Thomas Himes, Staff Writer

Posted: 12/23/2010 10:24:06 PM PST

MONTEREY PARK - A resident filed a lawsuit against the city this week challenging a March 8 ballot measure that calls for competitive bidding on the city's trash-collection contract.

While officials from the the city's contracted garbage company, Athens Services, deny involvement in the suit, Monterey Park officials said it was a blatant attempt by the hauler to influence the city's election.

Athens' contract runs out in 2017.

"They (Athens) had to find a resident that would have standing to file the lawsuit," City Attorney Mark Hensley said.

"It's really interesting to see how much of an effort (Athens) will go through to keep from going through a competitive bidding process seven years from now," he said.

Wing Chung is named as the petitioner in the lawsuit. The 52-year-old did not return calls to his Monterey Park home or his dental practice in Covina.

Athens officials denied the company is behind the court filing, but the suit was crafted by a law firm that regularly represents Athens. The lawyer whose name appears on the lawsuit, Robert Palmer, did not return calls for comment.

"We really don't have any involvement in the lawsuit," Athens Chief Operating Officer Gary Clifford said.

Athens Services' has a \$90 million exclusive contract to haul trash in Monterey Park. If the ballot measure passes, city officials would have

to receive competitive bids from a number of companies before awarding the next contract.

Clifford said the lawsuit isn't about competitive bidding, but rather "taking something to a vote of the people that the City Council should be able to handle on their own."

Monterey Park residents and businesses pay higher trash fees than other communities under a 15-year contract that was awarded to Athens without competitive bidding, according to city officials. The lawsuit alleges that the ballot measure is unconstitutional because it prevents future City Councils from forgoing a bidding process.

"We have a business arrangement with the city, and we want to be in a position where that relationship is between the (city) staff members and the company," Clifford said.

Clifford was formerly on the City Council in Glendora, where he and his fellow council members awarded Athens a no-bid, exclusive contract in 2006.

In April he resigned his elected position to take a job with the the trash hauler.

Councilman Frank Venti said the ballot measure aims to stop backroom deals that occur at the expense of residents. "Council members ... feel obligated to campaign contributions, and vote for their best interests as opposed to the best interests of the citizens of Monterey Park," Venti said.

Venti said by approving a 15-year contract in 2002, the City Council prohibited future elected leaders from deciding who hauls trash in Monterey Park.

"The 2002 council took away the rights of several City Councils," Venti said.

According to the lawsuit, the ballot measure also violates the California Environmental Quality Act because city officials failed to appropriately consider the effect of trash hauling services on the environment.

Hensley said the ballot measure is not subject to CEQA and claims to the contrary are "meritless."

The lawsuit also argues that the ballot measure would waste \$10,000 of taxpayers money.

**CITY COUNCIL AGENDA
ADDITIONAL INFORMATION**

JANUARY 4, 2011

L1. CONSIDERATION OF APPROVAL OF THE CITY'S EXCLUSIVE SOLID WASTE HANDLING SERVICES FRANCHISE AGREEMENT.

Staff recommends that City Council:

- a. Approve Contract No. C-1101-03, an eight year exclusive franchise agreement with Arakelian Enterprises Inc. dba Athens Services and include the enhanced waste diversion programs outlined in contract Appendix I guaranteeing a 75% waste diversion rate and authorize the Mayor to execute on behalf of the City; and
- b. Direct staff to prepare a transition plan and implementation schedule for the new Solid Waste Handling Services Agreement that includes a timeline for community outreach and the process for rate setting.

CONTACT: MICHAEL WITZANSKY, PUBLIC WORKS DIRECTOR

PUBLIC CORRESPONDENCE RECEIVED AFTER THE DISTRIBUTION OF THE AGENDA.

Monday, January 3, 2011

BOARD OF DIRECTORS

Maria Elena Durazo/Chair
Executive Secretary-Treasurer
LA County Federation of Labor, AFL-CIO

Robin Cannon/ Vice-Chair
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Concerned Citizen of
South Central Los Angeles

Kent Wong/ Secretary
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UCLA Center for Labor
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Professor of Politics & Director of
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City of Inglewood

Manny Valenzuela
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International Brotherhood of Teamsters

Tom Walsh
President
UNITE HERE! Local 11

EXECUTIVE DIRECTOR

Madeline Janis, Esq.

Redondo Beach City Council
City of Redondo Beach
415 Diamond Street
Redondo Beach, CA 90277

Dear Mayor Gin and Members of the City Council,

My name is Greg Good, and I'm Director of LAANE's Don't Waste LA Project.

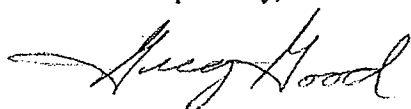
LAANE has spent over 15 years working with communities across Los Angeles County to develop a new economy for all. For LAANE and its partners, that means good jobs, a healthy environment and thriving communities.

Few industries have the breadth – or depth – of impacts in all of those areas like the waste and recycling industry. Given that, over a year and a half ago we launched into a partnership, with organizations ranging from the NRDC and Sierra Club, to the International Brotherhood of Teamsters and the LA County Federation of Labor, to establish region-wide industry standards, particularly as they relate to communities, the environment and job quality. Toward that end, we've engaged in deep industry and market research, and concluded that several companies – in particular, Athens Services (aka, Arakelian Enterprises, Inc.) – merit watchful consideration for any city preparing to lock into a long-term franchise or contract.

We are aware that the City of Redondo Beach has been engaged in a multi-year process for identifying a waste hauling company to partner with in the coming years. Moreover, we understand that the Public Works Commission, the City staff and the Council itself has devoted substantial time and resources to this process – and even sought other municipal references. Respectful of that, our experience also suggests that in processes such as this, technical aspects may subsume other significant policy considerations. Therefore, we submit the following documentation of Athens' record as an employer, municipal partner and environmental steward as augmentation to the City's substantial work. Further, we urge the Council to reconsider the staff proposal and select Crown Disposal as the City's exclusive waste hauler.

Thank you for your time – and please feel free to contact me with any questions.

Respectfully,



Greg Good, Esq.
Director, Don't Waste LA Project
LAANE
ggood@laane.org
c: 310-418-1751



ATHENS SERVICES: LAWSUITS, ILLEGAL ACTIVITIES & VIOLATIONS

Partial List as of January 4, 2011

Lawsuits & Illegal Activities

- July 8, 2010** Clean Street Inc. files lawsuit against Arakelian Enterprises for charging artificially low prices and illegally bundling street sweeping with trash hauling in an anticompetitive manner. The case is still pending.¹
- May 25, 2007** The California Department of Toxic Substance Control (DTSC) and Athens Disposal Company, Inc. enter into a Consent Order to settle alleged violations. The DTSC had alleged that Athens violated the California Code of Regulations in that they transported hazardous waste without a valid registration issued by the Department, stored it in excess of the time allowed by the Department, failed to acknowledge the acceptance of waste in the manifests and failed to deliver the waste to the designated facility listed on the manifest. Athens agreed to pay \$10,000 to settle the allegations without admitting guilt.²
- April 9, 2007** Class action lawsuit filed against Athens Disposal Company, Inc., d/b/a Athens Services alleging failure to pay overtime compensation, failure to provide rest periods or meal periods, illegal deductions from employee paychecks and failure to maintain adequate records. The court has granted class certification, and the case is still active.³
- February 13, 2007** Motor Vehicle and Wrongful Death suit filed by widow of Athens employee claiming improper servicing, maintenance and repair of Athens hauling truck employee was driving at time of his death.⁴
- May 24, 2005** Class action lawsuit filed against Arakelian Enterprises, Inc., d/b/a Athens Services alleging failure to pay straight time wages, failure to pay overtime wages, failure to provide rest periods or meal periods and failure to furnish accurate itemized wage statements. Case settled on July 26, 2010 and the defendant was ordered to pay attorney's fees and plaintiff's costs.⁵
- Oct. 8, 2002 – April 2, 2010** Ten Wrongful Termination or Employment Complaint lawsuits filed in Los Angeles Superior Court against Athens Services and related companies including two class action lawsuits listed below. Most of these actions were filed within the last five years. These cases include three cases involving unsafe working conditions: one involving retaliatory firing for complaining about unsafe conditions; another involving firing after disability incurred due to faulty truck maintenance; and a third involving firing after complaint about unsafe trucks due to bald tires and faulty brakes. Other causes of action include sexual harassment, race discrimination, age discrimination and termination as retaliation for complaining about discriminatory practices.⁶

¹ *Clean Street v Arakelian Enterprises*, Los Angeles Superior Court Case No. BC441335.

² State of California Environmental Protection Agency, Department of Toxic Substance Control, Docket HWCA 2007 1351, effective date May 25, 2007. In the Matter of: Athens Disposal Company, Inc. 15045 E. Salt Lake Ave. City of Industry, CA 91746 CAD 982034688

³ *Edixon Franco on behalf of all other similarly situated v. Athens Disposal Company, Inc.*, Los Angeles Superior Court Case No. BC369201.

⁴ *Natalie Hyndman v. Athens Disposal Co.*, Los Angeles Superior Court Case No. BC366236.

⁵ *John L. Flores, on behalf of others similarly situated v. Arakelian Enterprises, Inc., dba Athens Services*, Los Angeles Superior Court Case No. BC333940.

⁶ Los Angeles Superior Court Case Nos.: BC282933, BC289162, BC333940, BC345534, BC345535, BC351734, BC364475, BC369201, BC418721 and BC436786.

- Oct. 2000 – Oct. 2010** Fifty civil lawsuits filed in Los Angeles Superior Court against Athens Services and its affiliates in relation to motor vehicle incidents. This number includes one wrongful death case involving an employee, which is listed separately below.⁷
- September 30, 1994** The National Labor Relations Board issued a decision in which it concluded that Athens (Arakelian Enterprises, Inc. d/b/a West Covina Disposal) had violated federal labor law by engaging in surveillance of its employees' union activities, threatening to fire or lay off employees because they engaged in union activities, threatening to withhold benefits from employees because they engaged in protected concerted activities, and interrogating employees regarding their union activities and sympathies.⁸
- July 10, 1991** Athens investigated for forging CHP officer's signature on safety records. Recurring violations in truck safety such as cracked frames, loose steering, broken brakes and faulty equipment caused West Covina Police and the California Highway Patrol to look further into Athens' records. They found more than 60 verifications that the violations had been corrected but when they inspected the company's trucks, 22 of the trucks had defects. Upon further investigation, a Police Department handwriting expert determined that all but 6 of the 60 verifications of corrected violations had CHP signatures that had been forged. This investigation was reported in the Los Angeles Times on July 10, 1991.⁹
- November 13, 1989** Athens Disposal and its principals pled no contest to one count of conspiracy in an antitrust case as reported by the Los Angeles Times. They were charged with plotting to control prices, eliminate competition and rig bids to their own benefit. The plea bargain included large fines for the defendants.¹⁰

California Regulatory Agencies Inspections, Violations and Fines

- November 3, 2010** As of this date, Athens Services and affiliated companies have 61 active workers compensation cases listed in Cal/OSHA's database.¹¹
- September 21, 2009** Arakelian Enterprises/Athens Disposal Company fined \$270,000 by the California Air Resources Board for diesel emissions violations. An investigation showed that Athens failed to properly inspect their diesel vehicles during 2005 and 2006 and failed to install legally required emission-reduction devices from 2004-2008.¹²
- May 17, 2007** Cal/OSHA inspection at Athens Services facility located at 11121 Pendleton St., Sun Valley, CA 91352. Five serious violations and three general violations were discovered with an initial penalty in the amount of \$11,450. Serious violations included non-operational or broken safety guards on dangerous machinery.¹³

⁷ Los Angeles Superior Court Electronic Case Index, last viewed on December 15, 2010.

⁸ Arakelian Enterprises, Inc. d/b/a West Covina Disposal and City Refuse Service and Package and General Utility Drivers, Local 396, International Brotherhood of Teamsters, AFL-CIO. NLRB Cases 21-CA-28835 and 21-CA-29068. September 30, 1994, Decision and Order.

⁹ Los Angeles Times, July 10, 1991, *Garbage Company Probed Over Forgery Allegations*, by Franki Ransom

¹⁰ Los Angeles Times, November 16, 1989, *Haulers Plead No Contest*, (no author cited).

¹¹ OSHA website, <https://eams.dwc.ca.gov/public/GeneralPublic>

¹² News release from California Environmental Protection Agency, <http://www.arb.ca.gov/newsrel/2009/nr092109.htm>

¹³ Cal/OSHA Inspection No: 309149268, record available on Cal/OSHA website <http://www.osha.gov/pls/imis/establishment.html>, last visited on November 15, 2010; telephone conversation with Helen Samaniego, CAL/OSHA staff at Santa Ana office on November 6, 2010.

February 1, 2007

Cal/OSHA inspection at Athens Services facility located at 13440 Victory Blvd., Van Nuys, CA 91401. Inspection was initiated by an accident at the facility. Four general violations found with an initial penalty in the amount of \$1,685.¹⁴

December 13, 2005

Arakelian Enterprises/ Athens Services fined \$5,000 by the California Integrated Waste Management Board for hauling waste tires without a valid permit and registration.¹⁵

Nuisance Facility in City of Industry

A facility at 14048 Valley Blvd. in the City of Industry owned by Arakelian Enterprises, Inc., doing business as Athens Services ("Athens") has been the source of controversy, complaints, violation notices and lawsuits for over a decade now. When the facility applied in 2003 for a permit to increase its capacity from 1,920 tons per day to 8,500 tons per day, according to news accounts, residents protested.¹⁶ Between July and November 2003 alone, the South Coast Air Quality Management District ("SCAQMD") had received 44 odor complaints from nearby residents.¹⁷

Athens Services failed to properly install the required systems or follow the settlement conditions, and was aware of the problems, but increased the facility's capacity regardless,¹⁸ leading to an eventual civil suit filed in 2008 by the ("SCAQMD").¹⁹ A timeline of the problems associated with this facility follows:

August 21, 2008

SCAQMD files Complaint for Civil Penalties and Preliminary and Permanent Injunction against Athens in Los Angeles County Superior court.²⁰

July 24, 2008

The SCAQMD Hearing Board issued a Findings in a petition for an abatement order in which it concluded that, "the Facility has been the source of air contaminants – and specifically odors – that have caused and continue to cause detriment, nuisance, or annoyance to a considerable number of persons".²¹

May 30, 2007

CAL/OSHA inspection of the facility resulted in two general citations and two serious citations and resulting in an initial penalty of \$7,365. Violations included unmarked breakers impeding emergency equipment shut down.²²

December 20, 2004

One hundred residents living near the facility filed civil suit in Los Angeles Superior Court claiming the facility is a source of odor, air pollution and vermin. They also sought to block the proposed facility expansion with the lawsuit.²³

1999 – Nov. 28, 2003

According to a Cal/OSHA spokesman, as reported in the San Gabriel Valley Tribune, the California Occupational Safety and Health Administration ("CAL/OSHA") inspected the

¹⁴ Cal/OSHA Inspection No. 310196019, record available on Cal/OSHA website <http://www.osha.gov/pls/imis/establishment.html>, last visited on November 15, 2010

¹⁵ California Integrated Waste Management Board, Stipulation for Issuance of Administrative Decision, No. AC-2005-00001

¹⁶ San Gabriel Valley Tribune, November 28, 2003, *Waste Firm's Expansion Challenged*, Rodney Tanaka

¹⁷ Ibid

¹⁸ Ibid

¹⁹ *People of the State of CA v. Athens Disposal*, Los Angeles Superior Court Case No. KC53685, filed August 21, 2008.

²⁰ *People of the State of CA v. Athens Disposal*, Los Angeles Superior Court Case No. KC53685 filed August 21, 2008.

²¹ Hearing Board of the SCAQMD, Findings and Decision for Petition for an Order for Abatement, Case No. 5655-2, *SCAQMD vs Arakelian Enterprises dba Athens Services, Facility ID#54159*

²² Cal/OSHA Inspection No:125918953, available on CALOSHA website <http://www.osha.gov/pls/imis/establishment.html>, last visited on November 15, 2010 and conversation with Helen Samaniego, CAL/OSHA staff at Santa Ana office on November 6, 2010.

²³ San Gabriel Valley Tribune, December 29, 2004, *Whittier, CA- Area Residents Sue Waste Firm, Calling Site a Dirty Shame*, by Debbie Pfeiffer Trunnell.

facility seven times, twice initiated by complaints and three times following accidents. A September 13, 2002 accident involved the death of an employee and resulted in five citations and fines totaling almost \$29,000.²⁴

²⁴ San Gabriel Valley Tribune, November 28, 2003, *Waste Firm's Expansion Challenged*, by Rodney Tanaka

Diversion Plan Comparison - Projected Year-One Diversion of Hauler-Collected Solid Waste

Diversion Program	Athens		Athens Food Waste		Crown Food Waste		WMLA		WMLA additional processing ⁽¹⁾		Current - 3-year average ⁽²⁾	
	Tonnage	%	Tonnage	%	Tonnage	%		%		%	Tonnage	%
Source Separated Recycling	7,927	20.4%	7,926	20.4%	8,868	22.7%	9,653	25.4%	9,653	25.4%	8,415	20.1%
Green Waste	4,119		30		5,226		4,423		4,423		4,070	
Green Waste/ Residential Food Waste	-		5,115		-		-		-		-	
Residential Food Waste	-		-		221		-		-		-	
Subtotal: Green Waste/Residential Food Waste	4,119	10.6%	5,145	13.3%	5,447	13.9%	4,423	11.6%	4,423	11.6%	4,070	9.7%
Mixed Waste Processing - Bin	4,460		-		2,815		2,568		4,329		-	
Mixed Waste Processing/Food Waste - Bin, Other	-		5,238		-		-		-		-	
Commercial Food Waste	-		-		3,060		-		-		-	
Subtotal: Commercial MWP/Food Waste	4,460	11.5%	5,238	13.5%	5,875	15.0%	2,568	6.7%	4,329	11.4%	-	0.0%
Mixed Waste Processing - Residential Cart	-	-	-	-	4,187	10.7%	-	-	-	-	-	-
C&D Processing	-	-	-	-	-	-	500	1.3%	500	1.3%	-	-
Transformation	3,000	7.7%	3,000	7.7%	3,900	10.0%	1,411	3.7%	2,159	5.7%	3,257	7.8%
Roll-off Processing	-	-	-	-	995	2.5%	401	1.1%	557	1.5%	-	-
Other	-	-	-	-	-	-	80	0.2%	80	0.2%	-	-
Total Projected Annual Tons Diverted	19,506	50.2%	21,309	54.9%	29,272	74.8%	19,036	50.0%	21,701	57.1%	15,742	37.6%
Total Projected Annual Tons Collected	38,830		38,829		39,075		38,065		38,065		41,887	
Planned Diversion Percentage	50%		55%		75%		50%		57%		38%	
Guaranteed Hauler Diversion Percentage	50%		55%		70%		50%		57%			

(1) Athens and Crown proposals include processing of all bin refuse. WMLA provides separate pricing and guaranteed hauler diversion rates based on additional processing of bin refuse.

(2) From RFP. Calendar years 2007, 2008 and 2009.

Attachment B
Summary of Optional Services
 February 15, 2011

1. Door-to-Door Household Hazardous Waste (HHW) Pick-Up
2. City-Wide Commercial and Multi-Family Mixed Waste Bin Processing (to recover additional recyclables)
3. Residential Food Waste Recycling Program
4. Commercial Food Waste Recycling Program

1. Door-to-Door Household Hazardous Waste (HHW) Pick-Up

The Door-to-Door HHW Program is a convenient appointment based, unlimited at-home pick-up of household hazardous chemicals, universal waste and electronic waste for all Manhattan Beach single and multi-family residents. The residents may dispose of an unlimited amount of HHW from their garages, cabinets, and storage units through the appointment-based program. On the appointment day, residents would place their HHW in the designated area for their residence (area to be determined at time appointment is made, though *not at the curb*).

This program stems from consistent requests to the Public Works Department for a more convenient, weekday-friendly way to dispose of HHW. Residents have shared over and over again that the hassle of loading hazardous materials into their personal vehicles and driving them to another city only on weekends is not helpful. Also, residents have shared that they would participate in disposing of HHW properly if there was a more convenient program available.

The cost is billed per “cart customer” per month; therefore, all single family residents qualify and all multi-family residents who use carts (not bins) qualify. Each proposer provided a per-household monthly cost for the Door-to-Door service: Athens = \$0.38 per household per month, Crown = \$0.55 per household per month, and Waste Management = \$0.40 per household per month.

Wastes may be hazardous wastes if they exhibit any of the four characteristics of a hazardous waste (ignitability, corrosivity, reactivity, and toxicity). Improper disposal of household hazardous wastes can include pouring them down the drain, on the ground, into storm drain or sewers, or in some cases putting them out with the trash and recycling cans. The dangers of such disposal methods might not be immediately obvious, but improper disposal of these wastes can pollute the environment and pose a threat to human health.

Examples of Household Hazardous Wastes and what makes them Hazardous:

- Batteries--Includes all batteries, AAA, AA, C, D, button cell, 9-volt, and all others, both rechargeable and single use --Cadmium, Copper and (in older batteries) Mercury
- Cell Phones-- Antimony , Arsenic, Beryllium, Cadmium, Copper, Lead, Nickel, Zinc
- Computers and Computer Monitors-- Arsenic, Cadmium, Lead, PCBs
- Electronic Devices-- Lead
- Fluorescent Lamps-- Mercury

- Thermometers-- Mercury
- Non-empty Aerosol Cans-- Propane, Butane, Pesticides
- Televisions-- Arsenic, Cadmium, Lead, PCBs

According to the Environmental Protection Agency (EPA), Americans generate 1.6 million tons of HHW per year and the average home can accumulate as much as 100 pounds of HHW in the basement and garage and in storage closets.

The current options for facilities which accept all HHW from residents are the SAFE Collection Center drop off program at the Hyperion Treatment Plant in Playa Del Rey on Saturdays and Sundays or the LA County Round-Up drop-off programs at various cities around LA County on Saturdays. There are currently no facilities which accept all HHW available to Manhattan Beach residents on weekdays (with the exception of the pharmaceutical drop-off box at the Civic Center) and currently no affordable programs for at-home collection.

HHW included in the program is as follows:

- Chemicals (i.e.: household cleaners, paint, small propane tanks, automotive oils, aerosol sprays, pesticides, pool chemicals, etc.)
- Electronic waste (i.e.: TVs, computers, cell phones, gaming machines, printers, DVD players, etc.)
- Universal waste (i.e.: batteries, fluorescent lamps and bulbs, thermometers, etc.)
- Non-controlled Medical waste (i.e.: non-controlled unwanted and expired medication)

2. City-Wide Commercial and Multi-Family Mixed Waste Bin Processing (to recover additional recyclables)

The City-Wide Mixed Waste Processing Program removes recyclable material from the trash at a Material Recovery Facility (MRF) in order to increase diversion rates and reduce landfill tonnage. While residential recycling rates exceed 50-60% diversion, commercial (which includes Multi-Family) recycling rates are estimated at 20-30%. These low diversion rates inspired the Environmental Task Force to recommend the Mixed Waste Processing Program. Many factors contribute to the low diversion rates including employee training, space and design for recycling inside businesses and multi-family complexes, and employee and multi-family resident turnover. *This program is recommended to be implemented in addition to the recycling program that is in place. It will not replace recycling cans, carts or bins.* It is a joint effort to capture all unnecessary waste from entering the landfill; this program provides the assistance to remove recyclables from the trash so that they can be made into new products instead of filling up the landfill.

The Request for Proposal requires that the hauler recover 1,365 tons per year of recyclables from the commercial and multi-family trash bins. In addition to this requirement, the Request for Proposal required haulers to submit pricing to recover an additional 2,184 tons of recyclables from commercial and multi-family trash bins. These additional 2,184 recovered tons represent approximately 5% of the total waste collected currently by the city's hauler that is transported to

a landfill. If the Optional Service is selected by Council, a total of 3,549 tons of recyclables will be recovered and recycled instead of landfilled. The cities of Redondo Beach and West Hollywood utilize similar programs to increase diversion rates and reduce landfill tonnage from their business community.

3. Residential Food Waste Recycling Program

The Residential Food Waste program includes common recyclables and green waste that is diverted from the trash and is putrescible, otherwise known as “food waste.” Landfills accept millions of pounds of food waste each year.

According to the US Department of Agriculture, Americans throw away more than 25 percent of the food prepared, about 96 billion pounds of food waste each year. Food waste includes uneaten food and food preparation scraps from residences or households, and commercial establishments like restaurants, grocery stores, and cafeterias. The food service industry estimates that 4% to 10% of food purchases become waste before ever reaching a guest.

Food waste diversion programs are quite common in Northern California; however few are found in Southern California due to the few number of composting facilities. Although the Request for Proposal required only a 90 day pilot program to be conducted in summer 2012, two proposers, Athens and Crown, have the infrastructure in place to begin a complete residential food waste diversion program in the first year of service. Food waste will be included with the green waste in the green waste bin and “reverse sorted” at the companies’ facilities. Waste Management’s proposal included compliance for the 90 day pilot program in summer 2012. The cities of San Fernando and Santa Monica utilize a food waste recycling program.

4. Commercial Food Waste Recycling Program

The Commercial Food Waste program is required in the Request for Proposal as only a 90 day pilot program to be conducted in summer 2012. However, the same two proposers, Athens and Crown, who have the capabilities to launch a formal residential food waste program, can launch the same for commercial in the first year of service. This includes restaurants, grocery stores, office buildings with kitchens, schools, etc. Waste Management’s proposal included compliance for the 90 day pilot program in summer 2012. It is estimated that the majority of the food waste recycled in the food waste program will originate from the commercial district. The cities of San Fernando, Beverly Hills, and West Hollywood utilize a commercial food waste recycling program.

DRAFT

FRANCHISE

AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

* * *

January 20, 2011

DRAFT

FRANCHISE
AGREEMENT
BETWEEN
CITY OF MANHATTAN BEACH
AND
ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES
FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

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2. Public Education Plan
3. Initial Rates
4. Rate Adjustment Formula
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6. Company’s Faithful Performance Bond
7. Notary Certification
8. City Sponsored Special Events
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10. City Hazardous Waste Manifest
11. Commitment to Environmental Sustainability

RECITALS

This Franchise Agreement (Agreement) is entered into this __ day of _____, 2011, by and between the City of Manhattan Beach (City) and Arakelian Enterprises, Inc. dba Athens Services (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the City seeks to contract with a solid waste hauler to work together to exceed AB 939 goals by implementing sustainable programs and practices to reduce landfill tonnage, increase producer responsibility, reuse, repair and recycling, and educate the community to sustain the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, in response to a Request for Proposals, Company has submitted a proposal to City and City selected Company on the competitive advantages of that proposal over other proposals received by City; and,

WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 5.24 of the Manhattan Beach City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.2 Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Green Waste, to be Collected by Company pursuant to Section 3.6.3.

1.3 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. 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.

1.4 Agreement

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.5 Section Deleted

1.6 Section Deleted

1.7 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

1.8 Bin

"Bin" means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

1.9 Bulky Waste

"Bulky Waste" means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); Electronic Waste (including stereos,

televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.10 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

1.11 Can

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

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 30 and no greater than 101-gallons.

1.13 City

"City" means the City of Manhattan Beach, a 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.

1.14 Collect/Collection

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

1.15 Commercial and Industrial

"Commercial and Industrial" refers to property, or Owners of property, upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.16 Company

"Company" means Arakelian Enterprises, Inc. dba Athens Services, a California corporation and its officers, directors, employees, agents, companies and subcontractors.

1.17 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.18 Complaint

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.19 Composting

"Composting" means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

1.20 Construction and Demolition Waste

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

1.21 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

1.22 CPI

"CPI" means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index - U.S. city average.

1.23 Customer

"Customer" means the Person having the care and control of any Premises in the City receiving Solid Waste Collection service from the Company.

1.24 Disposal

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

1.25 Disposal Site(s)

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

1.26 Electronic Waste or E-Waste

"Electronic Waste" or "E-Waste" means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

1.27 Environmental Laws

"Environmental Laws" means all federal and State statutes, county, local and the 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 Toxic Substances Control 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.

1.28 Facility

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

1.29 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

1.30 Food Waste

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste programs included in Sections 3.2.7, 3.2.8 and 3.2.9, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,
- Tea bags, coffee grounds and filters.

1.31 Green Waste

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

1.32 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.33 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.34 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

1.35 Materials Recovery Facility

“Materials Recovery Facility” means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

1.36 Mixed Waste Processing

“Mixed Waste Processing” means the separation and sorting of recyclables and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

1.37 Multi-Family

"Multi-Family" means pertaining to any Residential Property with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

1.38 Section Deleted

1.39 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.40 Permanent Rolloff Box Service

“Permanent Rolloff Box Service” means the Collection of Solid Waste generated from ongoing operations at a Customer’s place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premise that would otherwise be Collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.41 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, town, city, or special purpose district.

1.42 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.43 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.44 Rate Year

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.45 Recycling

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.46 Recyclable Materials

"Recyclable Materials" means Residential, Commercial or Industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.47 Refuse

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.48 Residential

"Residential" refers to property, or Owners of property, which is used for Residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.49 Rolloff Box

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

1.50 Sand Section

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

1.51 Single-Family

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

1.52 Solid Waste

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.54 State

"State" means the State of California.

1.54 Temporary Service

"Temporary Service" means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a

Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business' ongoing operations is not included.

1.55 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

1.56 Universal Waste

"Universal Waste" means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

1.57 Zero Waste

"Zero Waste" means a focus on reducing landfill tonnage by reducing consumption, minimizing waste, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired or Recycled back into nature or the marketplace.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Administrative and Extension Fees

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

Additionally, the Company shall pay to the City an Extension Fee equal to \$60,000 (\$60,000) per month for each month the start of service is delayed beyond June 1, 2011 if this delay is due to City Council's award of this Agreement being extended past February 15, 2011. Company will endeavor to meet the start date in June even if delayed. However, if award of this Agreement is delayed and Company cannot start, and if the current contractor charges City this fee, Company will pay the fee when the cost is incurred by City for the additional cost paid to the previous contractor for the extension of the prior agreement.

2.3 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

2.4 Effective Date

The effective date of this Agreement shall be _____ ("effective date").

2.5 Term of Agreement

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 8.

- d) Effectiveness of the City Council Action. The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Proposition 218

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of Article XIID of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIIC, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

City agrees to meet and confer with Company prior to City's termination of this Agreement under this section to determine whether City and Company can negotiate a reduction in Company Compensation to offset the protested rate increase.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

2.9 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and

transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;
- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- e) Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- f) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- g) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;

- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold.
- m) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- n) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the Company under this Agreement. City may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Green Waste from City landscaping maintenance operations, contract services, “niche” Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

The City may direct the Company 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 that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the 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 of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- 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.

2.10.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within

ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

2.12 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.13 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (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 the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.15 Business License

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

The work to be done by the Company 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 the Company 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 the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

3.1.1 Residential Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with new Refuse Carts of 96- 64- or 32-gallons, as requested by Customer as described in Section 3.7.1.1. Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

Customers may request “Backyard Service” for an additional charge in accordance with the approved rate schedule. Backyard Service means that Company removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer’s designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge whether or not pickup was called in. If pickup was not called in, a notice shall be left for the Customer indicating a Cart overage Collection was made.

Company shall provide a three-month grace period at the start of service in which it will leave notices on Carts when overages are Collected, informing Customers as to this new policy, including how to call for an additional or larger Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse placed out for Collection in the Residential Customer’s own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

Company shall provide Bin service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family, Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located.

Customers that require twice per day Collection shall be charged as though they had twice the number of Containers being Collected once per day.

Customers may lease from Company or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

3.1.3.2 Temporary Bin Services

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3.3 Commercial Cart or Can Service

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

3.1.3.4 Locking Bins

Company may charge for locking bin service in accordance with the approved rate schedule. No additional fees shall be permitted for provision or installation of the lock.

3.1.3.5 Scout Service/Push-Out Service

Company may not charge an additional fee for scout service, whereby a second vehicle is used to position the Container for Collection, or push-out service, whereby the driver must move the Container a significant distance for Collection.

3.1.4 Rolloff Box Service

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 3. Customers may lease from Company or third parties compactor Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff Boxes remains within the scope of this Agreement, unless otherwise excluded per Section 2.9.

3.1.5 On-Call Bulky Waste Pickup

Company shall provide Bulky Waste pickup service to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day.

Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)
- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

3.1.5.1 Single and Multi-Family Customers

Single and Multi-Family Customers, whether Bin, or Cart Customers, are entitled to three Bulky Waste pickups per dwelling unit per year at no additional charge, with additional pickups Billed in accordance with the approved rate schedule in Exhibit 3. Customers may place up to three (3) items out for Collection per pick-up.

3.1.5.2 Commercial Customers

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 3, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

3.1.6 Commercial Container Overflow Procedures

3.1.6.1 Service Level Upgrade

Customers using Bins, Roll-Off Boxes, and Commercial Carts and Cans that regularly produce more Solid Waste 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 Container, Company 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 the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container in a three-month period, Company 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 will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period – Upon the third event of an overfilled Container in a three-month period, Company shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized

Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

3.1.6.2 Container Overage Fee

If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide new 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Section 3.7.1.1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

3.2.2 Commercial Recycling

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak[®] and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

Commercial Recycling Site Visits - Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers' Premises not currently subscribing to recycling service and meet with the Customer for the purpose of establishing a Recycling Program. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling

program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type.

At the end of the first six (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse service levels including number and size of Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

Company will visit all new Customers added after the start of this Agreement within two weeks of the start of new service. Company will continue to conduct on-site visits to Multi-Family Bin and Commercial Customers throughout the term of the Agreement to implement new and optimize existing Recycling programs for each Customer. A list of new account and ongoing account visits, including all the information required above, shall be provided to the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers – Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for seven-gallon Rehrig-Pacific Containers were approximately \$10.00 per Container.

3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City’s Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
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August 1 st , 2011	\$28,000	July 1 st , 2015	\$32,000
July 1 st , 2012	\$29,000	July 1 st , 2016	\$33,000
July 1 st , 2013	\$30,000	July 1 st , 2017	\$34,000
July 1 st , 2014	\$31,000	July 1 st , 2018*	\$35,000

* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

3.2.4 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent Construction and Demolition Waste that is suitable for Recycling from being taken to the landfill by:

- Following the City’s Construction and Demolition Debris Diversion requirements of the Municipal Code;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,
- Contacting contractors on a list provided by the City annually to educate them on Construction and Demolition Waste diversion.

3.2.5 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

3.2.6 Universal Waste

Company shall instruct Customers not to set out universal waste for Collection except through programs included in this Agreement specifically tailored for the Collection of such items, including SHARPS Collection programs, Bulky Waste Collection, or the optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green waste, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

3.2.7 Residential Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Residential Cart Customers. Program shall be subject to City approval. Company shall conduct the approved Residential food waste pilot program at no additional cost to City or ratepayers, beginning July 1, 2012 (unless start date is extended by City).

Pilot program shall be conducted for a minimum of six months. Participants shall include one full Residential route for one day each week. Company shall develop, produce and deliver public education materials to all Customers on the participating route. Materials shall be subject to advance City approval.

Company shall collect baseline tonnage data from this route for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company

shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.2.8 Commercial Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Commercial Food Waste generating Customers. Program shall be subject to City approval. Company shall implement a Commercial Food Waste pilot program for a minimum of six months beginning July 1, 2012 (unless start date is extended by City) for 10% of Food Waste generating Commercial Customers in the City at no additional cost to either City, participants or rate payers.

Prior to the start of the pilot program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Refuse capacity prior to the start of the pilot. Company collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of food waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Commercial food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.2.9 Permanent Food-Waste Program

City may request Company to implement both Residential and Restaurant on-going Food Waste programs at the start of service under this agreement. If City directs Company to implement these permanent programs under this section, Company shall be required to achieve a minimum of 55% diversion rate under Section 3.8.1 and will be compensated in accordance with the alternative food waste rate schedules included in Exhibit 3.

Under the Residential Food Waste program, Company shall educate Residential Cart Customers to place Food Waste in their Green Waste Cart for co-Collection and Composting by Company.

Under the Restaurant Food Waste program, Company shall co-Collect Refuse and Food Waste from food waste generating Commercial Customers. Customers on these routes shall be asked, but not required, to sort Food Waste into compostable bags delivered to Customer at no additional charge by Company and place these bags in their Refuse Containers. Company shall sort the material from these routes to remove and compost bagged Food Waste, and to remove non-compostables from the mixed waste stream and send the remaining Refuse for composting as well.

3.3 Green Waste Program

3.3.1 Residential Green Waste Collection

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one new 96-, 64- or 32-gallon Green Waste Cart in accordance with Section 3.7.1.1. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

3.3.2 Rolloff Box Service

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.3 Holiday Tree Collection Program

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they included ornaments, garlands, and tinsel, and stands.

3.3.4 End Uses for Green Waste

Company shall divert Green Waste materials from Disposal. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by CalRecycle.

3.3.5 Compost Bin Distribution

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill Customer a co-pay amount to be determined by City. The difference between the amount billed to the Customer and the actual cost of the bin to the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the City. City may inform Company as to an annual cap or overall cap on the number of compost bins to be distributed.

Company shall develop a public education flyer for this program and provide it to City for distribution. Company, including a Company-provided instructor, shall conduct three annual, one-hour composting classes, in May, July and October of each year.

3.3.6 Compost Give-a-ways

Twice per year, Company will provide two 40-yard containers of compost at the location of the City's choosing. Residents may pick up this compost on a first-come-first-service basis using resident-provided bags.

3.4 Warning Notice

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

3.5 Commercial Mixed Waste Processing

Company shall process all Bin Refuse, resulting in recovery of a minimum of 3,549 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not

include any business instruction and therefore does not need to be placed in outreach materials.

3.6 City Services

3.6.1 City Facilities Collection

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, parks, street maintenance operations, and Street Litter Containers (see Section 3.6.4 below). Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required.

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly dispose of hazardous waste that is generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 10. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

In the event that quantities increase by more than 20% from Exhibit 10 levels, City and Company shall mutually agree to additional compensation due Company based upon verifiable costs incurred by Company.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

3.6.4 Street and Park Litter Containers

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, all Solid Waste deposited in City's Street and Park Litter Containers as necessary to prevent overflow at no additional cost at all existing

locations. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

3.6.5 City Sponsored and Non-City Sponsored Events

The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. This shall include providing Containers to Collect and Dispose of all Solid Waste, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source-separated Recyclables. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes and liners at Company's cost.

3.6.6 Emergency Collection and Disposal Service

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

3.6.7 Sharps Collection Program

Company shall provide Sharps containers to requesting Residential Customers, both Single and Multi-Family Cart and Bin Customers. Containers will be mailed to the resident. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$65.00 per container. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in

Exhibit 9, Company may additionally or alternatively arrange for door-to-door Collection of such containers through this program; however, Company shall continue to deliver Sharps containers to residents' door. "Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program. This program will be provided at no additional charge to City or Customers beginning the first day of the start of service under this Agreement.

3.7 Containers

3.7.1 Carts

3.7.1.1 Residential Cart Distribution

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, Customers may request one Cart exchange at no charge each year. After one exchange per year, Customers may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

3.7.1.2 Removal of Existing Containers

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected. Company is responsible for all costs associated with Container collection and Disposal or Recycling. Company may retain any scrap value received from the Recycling of collected Containers.

3.7.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

Carts shall include a minimum of 25% recycled material and be recyclable.

3.7.1.4 Capacity

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

3.7.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

3.7.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

3.7.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color, matching current colors in distribution. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

3.7.1.8 Cart Labeling

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of

HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. The City's logo and, if requested by City, the City website shall appear on the Carts. Company's name and phone number shall be included on a label on the Cart lid (Company's name or logo shall not be visible on the side of the Cart).

3.7.1.9 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Carts. Company shall not hot stamp Company name on Carts.

TRASH, RECYCLING or **GREENWASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English, with graphics and instructions for proper disposal of HHW, and shall place labels on top of all Carts delivered to Customers.

3.7.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

3.7.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70

3.7.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

3.7.2.4 Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

3.7.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

3.7.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

3.7.3 Can Design and Performance Requirements

The Cans shall be manufactured by injection or rotational molding and meet the Can design and performance requirements as specified below. All Cans selected shall be subject to City approval.

3.7.3.1 Capacity

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-

gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

3.7.3.2 Can Handles

The Can handles will provide comfortable gripping area for carrying the Can.

3.7.3.3 Can Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

3.7.3.4 Can Colors

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

3.7.3.5 Identification Markings

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

3.7.3.6 Can Load Capacity

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

3.7.3.7 Can Durability

Cans shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.3.8 Chemical Resistant

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

3.7.3.9 Reparability or Replacement

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

3.7.4 Cart and Can Ownership and Maintenance Responsibilities

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

3.7.5 Bins and Compactors

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Company shall remove graffiti at no additional charge from any Container within twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

3.7.6 Rolloff Boxes

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.8 Diversion Requirements

3.8.1 Hauler Diversion Requirements

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation is 50% of the waste Collected by Company under this Agreement during each year of this Agreement; diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to CalRecycle). If City instructs Company to implement Food Waste diversion programs per Section 3.8.1, this minimum diversion rate shall be 55%. Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants the City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

3.8.2 City-wide Diversion Rate

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the

Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the City under this section that are not otherwise required to be implemented under this Agreement will be implemented in accordance with Section 2.10, under which Company may be entitled to an adjustment in compensation.

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 P.M and 7:30 A.M. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. Company shall adjust the early morning start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven day per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven day per week customers.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes

into a revised plan and review said revised plan with the City within thirty (30) calendar days.

3.9.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. Company will use Collection vehicles model year 2010 or newer. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) years old. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG) at the start of service under this Agreement. Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the Company in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-Off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its 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) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) The Company 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. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing

service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.
- 4) Company shall equip all route vehicles with the Zonar V2J High-Definition GPS/ Vehicle Diagnostics system and enable the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

F. City Inspection Per Code. The 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 applicable provisions of the State Vehicle Code, including all

Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, 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 Manager, which decision shall be final.

3.9.3 Litter Abatement

A. Minimization of Spills. The Company 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 are spilled during Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company 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 the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify

instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

3.9.4 Personnel

The Company 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company'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.

The Company 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. The Company 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company 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.

3.9.5 Identification Required

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

3.9.6 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

3.9.8 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

3.9.10 Job Fair For Displaced Workers

Company will conduct a job fair for displaced Solid Waste employees that previously worked in the City for prior Solid Waste contractor. Company will interview all interested displaced employees and will make offers of employment to all employees meeting Company standards.

3.9.11 Neighborhood Safety Program

Company drivers shall be trained to report unusual or suspicious situations that the drivers may see on route to assist local law enforcement.

3.10 Transportation, Disposal and Processing

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Sites shall be the Chiquita Canyon Landfill, Sunshine Canyon Landfill, El Sobrante Landfill and Puente Hills Landfill and the approved waste-to-energy facilities shall be the Commerce Refuse to Energy Facility (primary) and the Southeast Resource Recovery Facility. The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. In the event that City selects a Disposal Site or other Facility, the City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a change in tip fee or transportation costs.

If City directs Company to a facility other than a Solid Waste Facility selected or owned by Company, and use of this Facility adversely affects the ability of the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the City and Company shall meet and confer and mutually agree on revised obligations under Sections 3.8 and 8.3

3.11 Status of Disposal Site

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

3.12 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 Manhattan Beach Solid Waste. Company may request permission from the City for an exception on a case-by-case basis.

3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in the City. The annual route audit information shall include, at 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);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Whether each individual address is Commercial or Multi-Family;
- Number of Residential Dwelling units at each Multi-Family account;
- Service Level per Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted

to the Public Works Director and one to the City's billing manager. This summary shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total (Residential Cart, Multi-Family Bin, and Commercial);
- Types of billing and service exceptions observed;
- Number of billing and service exceptions by type;
- Total monthly billing, pre-audit;
- Total monthly billing, post-audit (subsequent to corrections of identified exceptions; and,
- Percentage of billing and service exceptions:
 - Percentage of the number of accounts with errors to the total number of accounts served;
 - Percentage of the "net" change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
 - Percentage of the "absolute" change in net monthly billing as a result of the audit to the total "pre-audit" monthly billing.

The report shall include a description of the procedures followed to complete the annual 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. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company's plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

3.14 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made,

through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company 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. The Company 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 the City. In addition to other required notifications, if the Company observes any substances that 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, the Company will immediately notify the Public Works Director or the Public Works Director’s designee.

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

3.15 Hazardous Waste Management Component

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

3.16 Disposal Capacity Guarantee

Company guarantees capacity for 19,500 tons per year of Manhattan Beach Refuse for the term of the agreement at the Chiquita Landfill. With City approval that shall not be unreasonably withheld, Company may replace the guarantee at this landfill with a guarantee at another landfill approved under Section 3.10 above. This guarantee is not a limit on Disposal quantities Collected under this Agreement. Should City tonnage exceed the guaranteed Disposal quantity, Company remains fully responsible for Disposal of all Refuse with no adjustment to compensation.

ARTICLE 4
OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services in subsections A and B below.

A. Compost Bin Co-Pay. The Residential Customers' co-pay for compost bins shall be billed by the Company.

B. Rolloff Box and Temporary Bin Services. In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

4.1.2 City Billing

City shall perform all billing under this contract, other than Rolloff Box service, temporary Bin service, and compost bin co-pays. City reserves the right to direct Company at any time during the Agreement Term to charge Customers for periodic charges such as Bulky Waste pickups, Cart overage pickups, and Bin Container Overage Fees.

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of the City billing Customers. Payment will be based on City's records of services rendered and will be

subject to subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see 4.1.4 below).

4.1.4 Company Responsible for Service Level Accuracy

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt. Failure to notify the City in writing within 45 days shall confirm the Company's approval and acceptance of the payment amount.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

4.1.5 Review of Billings

The Company shall review Billings to customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.6 Suspension of Service Due to Non-Payment

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time

periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.7 Late Fees

Company may assess interest at a rate of 1.5% per month on outstanding balances for services Billed by Company beginning 60 days after invoice is sent. Company may charge insufficient funds fees of no more than \$35.00 per returned check. This section is not applicable to City-billed services, as City pays Company based upon Billings, not receipts.

4.1.8 Franchise Fee

A. Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes Billing of permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

B. Time and Method of Payment

Company shall remit the Franchise Fee payments on or before the thirtieth (30th) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30th) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs),

and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

4.2 Customer Service

4.2.1 Office Hours

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and number of representatives shall be adequate to handle the volume of calls typically experienced on the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

4.2.3 Complaint Documentation

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

4.2.4 Resolution of Customer Complaints

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

4.2.5 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints and assist with waste reduction programs. City shall have the right to approve the Company's choice for a liaison.

Government Liaison shall be the community relations liaison for Manhattan Beach business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his\her physical presence when

requested or appropriate at schools, businesses and business organizations, community events, Environmental Task Force meetings, City Council meetings and workshops, et al.

4.2.6 Service Liaison

Company shall designate in writing a field supervisor (i.e. route manager) as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints, and strategize with City on an on-going basis regarding more efficient Collection practices. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

4.2.7 Customer Service Liaison

Company shall designate a customer service representative to which the City can direct customers that contact the City with Solid Waste service questions. Customers Service Liaison will take responsibility for completing and closing out work orders within the City's designated work order system.

4.2.8 School Outreach Liaison

Company shall designate a School Outreach Liaison to oversee and coordinate all waste reduction activities under Section 4.3.8 below.

4.2.9 Transition Process Office

Company will lease an office/store front in the City during the transition process. Customers will be able to request and obtain Carts or Cans, request information and assistance, learn about sustainability, and have issues handled at this location. This location shall be open, at a minimum, beginning March 2011 through June 2012.

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Zero Waste Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to significantly exceed AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods acceptable to the City. Any outreach material utilizing paper, provided and distributed by the Company, shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall assist the City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to the City. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

- **Initial Cart Selection Mailing** – Company shall prepare and distribute the mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** – At least 30 days prior to August 1, 2011, Company will prepare and mail, using City-provided labels, an initial mailing to Residential and Commercial Customers explaining the transition from the existing programs to the

new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information. For Residential Cart Customers, this mailing will be in addition to the initial mailing requesting Cart Customers to select Cart sizes and numbers.

- **Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an “e-book” or “e-magazine” format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.
- **Green Street Scene** – Company shall provide a web-based Recycling program and educational tool “The Green Street Scene” to educate and distribute information to Customers. Company may replace “The Green Street Scene” with an alternative, comparable interactive media subject to City’s approval.
- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract is in effect, using City-provided mailing labels.
- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City’s request and with City’s review and approval of the materials. Notices will be mailed by the City with customer’s bills, if size of the item

and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.

- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners' associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the Company shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material.

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Zero Waste Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Zero Waste programs.

4.3.5 Use of "Manhattan Beach Recycles" Program Name

The program name "Manhattan Beach Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. City confers a revocable license to Company to use the name "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

Company shall provide in-unit Recycling Containers to each Multi-Family Bin Customer Dwelling Unit upon request of individual Dwelling Unit, property owner or manager. In-unit Containers shall be hot stamped or labeled with items that may be placed in the Recycling Container, and shall not carry Company logo and shall become the property of the City upon distribution. City logo may be used. Company will provide all property managers and Residents with Bin service with Recycling program guidelines, posters to be placed in laundry rooms, refuse/recyclable container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin Customer service. Company shall contact each Multi-Family Customer building owner or property manager by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the recyclables containers.

Company shall prepare and mail a brochure with recycled content and labeled “Made from Recycled Paper” at least once per year to each Multi-Family Dwelling unit that does not individually receive semi-annual and quarterly notices under Section 4.3.2; brochure shall describe all Solid Waste programs and holiday schedules as they apply to Multi-Family Cart Customers and to Residential Bin Customers.

Company commits a minimum of 150 hours of Company staff, or third-party contractor, time per year towards meeting Multi-Family outreach efforts as described in this section.

4.3.7 Commercial Outreach Recognition Program

Company commits a minimum of 350 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

Green Business Certification Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with an award to be mutually agreed upon by City and Company.

Zero Waste Green Works – Promoting Recycling at the Work Place

Company will provide businesses with recycled-content prizes such as reusable water bottles, reusable grocery bags, and/or other incentives for managers to provide to employees who contribute to the business' Zero Waste green program.

Company will provide business managers with promotional information, flyers and instructional posters made from recycled paper and labeled "Made from Recycled Paper" to implement a comprehensive waste reduction and recycling program, including information on what cannot be placed in the recycling container (i.e.: HHW).

Company shall provide initial and on-going consultation and support to businesses who request it to ensure long term success of their business' waste reduction and recycling program.

Carpet, Carpet Padding and Textiles

Company will recover and Recycle textiles, synthetic and natural fiber carpet and carpet padding Collected on Bin Refuse routes. For material that does not fit in Customers' Refuse Bins, Customers may call in for Bulky Item Collection of the material, which will be Recycled. Regular Refuse Bulky Item rates will apply.

4.3.8 School Zero Waste Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District and private schools, to promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative recycling containers to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;

- Conduct a minimum of one assembly promoting recycling at each school in the City each year;
- Education and training on proper recycling and waste reduction techniques to students and teachers and web-based resources for the district and schools' websites;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program;
- Proper signage for all school sites;
- Provide teachers with sample lesson plans and activity sheets made from recycled paper and labeled "Made from Recycled Paper" on relevant topics on an as requested basis; and,
- Contact each school at least once per semester to offer all services included in this section. City or school may request that more frequent contacts be made. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at schools, Company shall make an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management,

janitorial staff, faculty and student volunteers to ensure that improved recycling and waste reduction techniques have been implemented.

Company commits a minimum of 500 hours of Company staff, or third-party contractor, time per year towards meeting School outreach efforts as described in this section. Time allocated to contacting schools to offer programs shall not be counted towards minimum.

4.3.9 Recycling Facility Tours

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

4.3.10 Additional Recycling and Take-Back Programs

Company will work with local businesses to continue and improve existing take-back programs.

Company shall conduct quarterly waste characterizations of the Residential Cart Refuse waste stream for the term of the Agreement to evaluate how well Recycling programs are working. Company will provide data to City.

4.3.11 Full-Time Outreach and Education Position

Company shall hire a full-time employee dedicated to the City of Manhattan Beach to address outreach, community education, training and sustainability requirements under this Agreement and the goals of the City's Environmental Task Force. Company will consider employment for current employees serving such needs, if displaced.

4.4 Waste Generation/Characterization Studies

Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Company 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 (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Company 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 5

COMPANY COMPENSATION AND RATES

5.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

5.2 Initial Rates

The Company Compensation from the start of service under this Agreement through June 30, 2012 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2012, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline. If any rates would decline based upon Section 5.4 calculations and a rate decrease is not implemented, the subsequent rate adjustment shall be based upon the average changes in indices since previous rate adjustment instead of the average change over the prior year.

The rate adjustments shall apply to the Company Compensation rates included in Exhibit 3. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

5.4 Method of Adjustments

5.4.1 General

For Rate Years beginning July 1, 2012, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

5.4.2 Cost Components for Rate Adjustment Indices

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor (1)</u>
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	29%	69%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	11%	20%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	5%	0%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste/ Organics (if applicable)	44%	N/A	Consumer Price Index for All Urban Consumers (CUURA421SA0), all items, Los Angeles-Riverside- Orange County or 5%, whichever is lower, with adjustment above 5% rolled forward to subsequent year
Transformation	4%	N/A	Actual change in the per ton gate rate at the Commerce Waste-to-Energy facility
All Other	7%	11%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

5.4.3 Rate Adjustment Steps

Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the

December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 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.

Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

5.5 Extraordinary Adjustments

Company may request an adjustment to maximum rates at reasonable times other than that allowed under Section 5.3 and 5.4 of this Agreement in the event of extraordinary changes in the cost of providing service under this Agreement. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of the rate based on an increase or decrease in a direct per ton surcharge assessed at the disposal site or transfer station by Federal, State or local regulatory agencies after the effective date of this Agreement, to the extent the percentage change in these adjustments exceed the cumulative percentage change in the Disposal component adjustments granted under Section 5.3.

For each request for an adjustment to the maximum rates that Company may charge Customers brought pursuant to this section, Company 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 Company in preparing the estimate. Company 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 Company's annual financial statements in connection with the City's review of Company's rate adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

City shall review Company's request and, in City's sole judgment and absolute 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 Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

5.6 Puente Hills Closure Extraordinary Rate Adjustment for Green Waste

Note: The following extraordinary rate adjustment is not applicable if City implements the Residential Food Waste program described in Section 3.2.9, as this Residential Green Waste is to be composted from the start of service and not sent to Puente Hills as alternative daily cover under the Food Waste program:

If City does not implement the Residential Food Waste program described in Section 3.2.9, Company will deliver 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. Company shall be entitled to a one-time 5.5% 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 Company delivers the Green Waste for composting and full diversion credit. This shall be considered to entirely compensate Company 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.

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.
- c) Results of the most recent route audit as described in Section 3.13.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results,

feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

6.2 Performance Satisfaction Survey

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1. City shall notify Company of its desire for such a survey at least 90 days in advance of the Solid Waste Services and Performance Review Meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Company. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Company to send out separate Single Family and Multiple-Family/Commercial surveys. Company shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may choose to write or re-write the survey. City may require that Company have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

The Company 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, the Company agrees to conduct data Collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. 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 the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

7.2.3 Solid Waste Service Records

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for limited services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick ups;
- f) Number of Refuse, Recycling, and Green Waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

7.2.4 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

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 Biennial Audit

Company shall fund biennial audits as described below. 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. The first audit will be based on the Company's reports and records for Fiscal Year 2012 and may be conducted as soon as relevant data, such as tonnage, is available. Audits will be performed every other year thereafter (the biennial audit). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

7.2.7 Payments and Refunds

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

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 efficiency of operations;
- b) Evaluate past and expected progress towards significantly exceeding AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under

penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

Public Works Director (or designated representative)
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.

- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.
- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.

7.3.3 Quarterly Reports

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling programs with Company, and their service levels.

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated

companies, and of other entities that may perform services under this Agreement, as the City may request.

- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
- f) Number of routes and route hours per day by type of service.

7.3.5 Financial Report

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing the Company'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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

7.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

7.5 Right to Inspect Records

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, 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) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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 or active negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement. Company’s indemnification of the City is subject to all of the following restrictions:

- a. The Company’s obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et. seq.* of the Public Resources Code.
- b. No payment required under the company’s obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company’s breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company’s breach or non-compliance resulted from City’s action

or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

8.4 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a) The City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
 - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
 - d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. The Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

8.5 Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to

cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the 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, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.7 Performance Bond Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 3.8, will not be substantiated until after the final service date. Therefore, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (18) months after the end of the Term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

8.8 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

8.9 Pavement Damage

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by Company's, or Company's subcontractor's, vehicles or employees. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

9.5 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company 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 Company is entered.
- E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand,

with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company 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.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company 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.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

10.2 Criminal Activity of Company

Should the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Company has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty and any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain. If the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. The City finds, and the Company 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 the City as a result of a breach by the Company of its 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) the services provided under 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 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 Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the 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.

Company Initial Here Z.A. City Initial Here _____

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

1. **Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five (5) such failures annually: \$ 50.00
- c) For each failure to correct a missed pickup within the timing allotted for correction per Section 4.2.2, and for each additional business day in which the Collection is not made up, which exceeds ten (10) such failures annually: \$50.00/day
- d) 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: \$150.00

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids closed which exceeds ten (10) such occurrences annually: \$150.00

- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) such occurrences annually:

\$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually:

\$150.00
- f) For each failure to deliver a Rolloff Box or temporary Bin within 48 hours of a Customer's request:

\$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed:

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:

\$250.00
- c) For each failure to notify City within one (1) hour from the time Company has remedied a complaint forwarded by City.

\$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers:

\$150.00
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company.

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversion Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the diversion requirement per Section 3.8.1, beginning with the first full calendar year 2012, and including any partial calendar year at the end of the term: \$25 per ton

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 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 11.8: \$1,000/day

The 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.

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

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes,

other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Company shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify Public Works Director sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Company shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Company is not excused from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 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.

Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a “reverse 911” contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company 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, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

10.6 Assurance of Performance

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

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

11.2 Compliance with Law

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

11.3 Governing Law

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

11.4 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.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) Company shall pay City its reasonable expenses for attorney's and/or consultant'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 Company 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.
- b) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided;

- 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 Company's operations.

- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the 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 sale of operations conducted by the Company 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 the City with a complete list of 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties 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.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Company shall be responsible for coordinating transfer immediately after Company's final pickups, so as not to disrupt service. Company 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. Company shall provide means of access to the new service provider at least one full Working 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.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that customers neither need to find storage for two sets of containers nor go without a container for an inconvenient length of time.

11.9 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.

11.10 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 that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 The Company's Investigation

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

11.12 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

11.13 Notice

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

If to the City: City Manager
 City of Manhattan Beach
 1400 Highland Avenue

Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

And to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to the Company: Chief Operating Officer
Athens Services
14048 Valley Blvd.
City of Industry, CA 91746

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

11.14 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such

designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

11.15 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of 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 under Section 10 of this Agreement.

11.16 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. If changes to the municipal code of the City made after the execution of this Agreement are in conflict with this Agreement, the terms and conditions set forth in this Agreement shall prevail.

11.17 Privacy

The Company 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 the Company 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 so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.18 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

11.19 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

11.20 Section Deleted

11.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

12.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

12.4 Interpretation

This Agreement, including the exhibits 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.

12.5 Agreement

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

12.6 Severability

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

12.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.


CITY OF MANHATTAN BEACH

("City")

ATTEST: _____
CITY CLERK

By: _____
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

ATHENS SERVICES
By: 

City Attorney

Name: Ron Arakelian, III

Title: Executive Officer

EXHIBIT 1
COMPANY PROPOSAL

EXHIBIT 2
PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 3
MAXIMUM INITIAL COMPANY COMPENSATION

Residential Monthly Rates (through June 30, 2012)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate				
	Standard Service	Backyard Service Surcharge w/o Food Waste (2)	Standard Service w/food waste	Backyard Service Surcharge with Food Waste (2)	Extra Refuse Cart (with or w/o Food Waste)
96-gallon refuse ⁽¹⁾	\$ 14.18	\$ 5.09	\$ 14.74	\$ 5.37	\$ 8.00
64-gallon refuse ⁽¹⁾	\$ 10.18	\$ 5.09	\$ 10.74	\$ 5.37	\$ 6.00
35-gallon refuse ⁽¹⁾	\$ 6.18	\$ 5.09	\$ 6.74	\$ 5.37	\$ 4.00

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building			
	Standard Service	Backyard Service Surcharge w/o Food Waste (2)	Standard Service w/food waste	Backyard Service Surcharge with Food Waste (2)
2 Dwelling Units	\$ 20.36	\$ 10.18	\$ 21.48	\$ 10.74
3 Dwelling Units	\$ 30.54	\$ 15.28	\$ 32.22	\$ 16.12
4 Dwelling Units	\$ 40.72	\$ 20.37	\$ 42.96	\$ 21.49
5 Dwelling Units	\$ 50.90	\$ 25.46	\$ 53.70	\$ 26.86
6 Dwelling Units	\$ 61.08	\$ 30.55	\$ 64.44	\$ 32.23
7 Dwelling Units	\$ 71.26	\$ 35.64	\$ 75.18	\$ 37.60
8 Dwelling Units	\$ 81.44	\$ 40.73	\$ 85.92	\$ 42.97
9 Dwelling Units	\$ 91.62	\$ 45.83	\$ 96.66	\$ 48.35

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

Note: Additional refuse carts for customers with 2 to 9 units, and additional recycling and green waste carts for all residential cart customers shall be provided at no additional charge.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2012)

Commercial Bin Rates

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 12.33	\$ 24.66	\$ 36.98	\$ 49.31	\$ 61.64	\$ 73.97	\$ 86.30	\$ 3.50
32-Gallon Cart	\$ 12.33	\$ 24.66	\$ 36.98	\$ 49.31	\$ 61.64	\$ 73.97	\$ 86.30	\$ 3.50
64-Gallon Cart	\$ 24.66	\$ 49.32	\$ 73.96	\$ 98.62	\$ 123.28	\$ 147.94	\$ 172.60	\$ 7.00
96-Gallon Cart	\$ 36.99	\$ 73.98	\$ 110.94	\$ 147.93	\$ 184.92	\$ 221.91	\$ 258.90	\$ 10.00
2 Cubic Yard	\$ 52.46	\$ 99.46	\$ 146.46	\$ 193.45	\$ 240.45	\$ 287.42	\$ 334.44	\$ 19.35
3 Cubic Yard	\$ 59.96	\$ 114.08	\$ 168.19	\$ 222.30	\$ 276.41	\$ 330.53	\$ 384.64	\$ 29.00
4 Cubic Yard	\$ 67.46	\$ 128.71	\$ 189.96	\$ 251.20	\$ 312.45	\$ 373.70	\$ 434.94	\$ 38.69
6 Cubic Yard	\$ 82.46	\$ 157.96	\$ 233.46	\$ 308.95	\$ 384.45	\$ 459.95	\$ 535.44	\$ 58.01
2 Cubic Yard Compactor	\$ 78.69	\$ 149.19	\$ 219.68	\$ 290.18	\$ 360.68	\$ 431.18	\$ 501.67	\$ 33.04
3 Cubic Yard Compactor	\$ 89.94	\$ 176.29	\$ 262.63	\$ 348.98	\$ 435.33	\$ 521.67	\$ 608.02	\$ 49.15
4 Cubic Yard Compactor	\$ 101.19	\$ 193.07	\$ 284.93	\$ 376.81	\$ 468.68	\$ 560.55	\$ 652.42	\$ 66.64
6 Cubic Yard Compactor	\$ 123.69	\$ 236.94	\$ 350.18	\$ 463.48	\$ 576.68	\$ 689.93	\$ 803.17	\$ 100.27

Commercial Bin Rates w/Restaurant Food Waste Program

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 13.00	\$ 25.99	\$ 38.98	\$ 51.97	\$ 64.97	\$ 77.96	\$ 90.96	\$ 3.50
32-Gallon Cart	\$ 13.00	\$ 25.99	\$ 38.98	\$ 51.97	\$ 64.97	\$ 77.96	\$ 90.96	\$ 3.50
64-Gallon Cart	\$ 26.00	\$ 51.98	\$ 77.96	\$ 103.94	\$ 129.94	\$ 155.92	\$ 181.92	\$ 7.00
96-Gallon Cart	\$ 39.00	\$ 77.97	\$ 116.94	\$ 155.91	\$ 194.91	\$ 233.88	\$ 272.88	\$ 10.00
2 Cubic Yard	\$ 55.29	\$ 104.83	\$ 154.37	\$ 203.90	\$ 253.43	\$ 302.94	\$ 352.50	\$ 19.35
3 Cubic Yard	\$ 63.20	\$ 120.24	\$ 177.27	\$ 234.30	\$ 291.34	\$ 348.38	\$ 405.41	\$ 29.00
4 Cubic Yard	\$ 71.10	\$ 135.66	\$ 200.22	\$ 264.76	\$ 329.32	\$ 393.88	\$ 458.43	\$ 38.69
6 Cubic Yard	\$ 86.91	\$ 166.49	\$ 246.07	\$ 325.63	\$ 405.21	\$ 484.79	\$ 564.35	\$ 58.01
2 Cubic Yard Compactor	\$ 82.94	\$ 157.25	\$ 231.54	\$ 305.85	\$ 380.16	\$ 454.46	\$ 528.76	\$ 33.04
3 Cubic Yard Compactor	\$ 94.80	\$ 185.81	\$ 276.81	\$ 367.82	\$ 458.84	\$ 549.84	\$ 640.85	\$ 49.15
4 Cubic Yard Compactor	\$ 106.65	\$ 203.50	\$ 300.32	\$ 397.16	\$ 493.99	\$ 590.82	\$ 687.65	\$ 66.64
6 Cubic Yard Compactor	\$ 130.37	\$ 249.73	\$ 369.09	\$ 488.51	\$ 607.82	\$ 727.19	\$ 846.54	\$ 100.27

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2012)

Rolloff Box Rates

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	\$ 145.00 per pull
Compactor Box, Any Size	\$ 165.00 per pull
Rolloff Per Ton Charges	
Refuse Disposal	\$ 42.00 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 19.95 per ton
Additional Container Rental - (for boxes emptied less than 3x/ month)	
Standard Box, Any Size	\$ 27.68 per week
Compactor Box, Any Size	\$ 37.27 per week

Optional C&D Rates

Rate Per Pull, Excluding Disposal	
25-40 cubic yard roll-off box	\$ 165.00 per pull
Low Boy (10 cubic yard) roll-off box	\$ 165.00 per pull
Rolloff Per Ton Charges	
Mixed Loads of C&D Debris	\$ 48.00 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
Temporary Bin Service	
First Dump, including delivery and disposal	\$ 85.00 per dump
Additional dumps, including disposal	\$ 50.00 per dump

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2012)

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 75.65	\$ 85.00	\$ 94.35	\$ 113.50
Each Additional Dump	\$ 33.50	\$ 50.00	\$ 66.50	\$ 100.00
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)

EXHIBIT 4A

EXAMPLE CART & BIN RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices							
Row	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/ Column A) -1)		
1	Labor	(1)	107.30	109.15	1.7%		
2	Fuel	(2)	344.0	159.1	-53.8%		
3	Equipment	(3)	118.9	124.3	4.5%		
4	Disposal	(5)	215.0	220.0	2.3%		
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%		
6	All Other	(4)	215.8	219.2	1.6%		
Step Two: Determine components							
Row	Adjustment Factor	Index	D Cost Factor Category Weighted as a % of Component Total (7)	E Percent Change In Index (from Column C)	F Total Weighted Change (Columns D x E)		
7	Labor	(1)	29.0%	1.7%	0.5%		
8	Fuel	(2)	11.0%	-53.8%	-5.9%		
9	Equipment	(3)	5.0%	4.5%	0.2%		
10	Disposal	(5)	44.0%	2.3%	1.0%		
11	Transformation	(6)	4.0%	14.6%	0.6%		
12	All Other	(4)	7.0%	1.6%	0.1%		
13	Total		100.0%		-3.5%		
Step Three: Apply percentage change to rates							
Row	Rate Category		G Current Contractor Rate (8)	H Total Weighted Percent Change (from Column F)	I Rate Increase or Decrease (Column G x Column H)	J Adjusted Rate (Column G + Column I)	
14	64-gallon Cart Service		\$ 10.18	-3.5%	\$ (0.36)	\$ 9.82	
15	2 unit Service		\$ 30.36	-3.5%	\$ (1.06)	\$ 29.30	
16	1 unit backyard surcharge		\$ 5.09	-3.5%	\$ (0.18)	\$ 4.91	
17	2 unit backyard surcharge		\$ 10.18	-3.5%	\$ (0.36)	\$ 9.82	
18	Extra bulky item		\$ 21.60	-3.5%	\$ (0.76)	\$ 20.84	
19	Special Pickup/Cart Ov.		\$ 5.00	-3.5%	\$ (0.18)	\$ 4.82	
20	Commercial Can		\$ 12.33	-3.5%	\$ (0.43)	\$ 11.90	
21	3 yd bin, 1x week		\$ 59.96	-3.5%	\$ (2.10)	\$ 57.86	
22	3 yd comp., 1x week		\$ 89.94	-3.5%	\$ (3.15)	\$ 86.79	
23	3 yd bin, extra pickup		\$ 29.00	-3.5%	\$ (1.02)	\$ 27.98	
Step Four: Re-weight cost components							
Row	Adjustment Factor	Index	K Cost Component (Column D)	L Percent Change In Index (Column E)	M Change in Cost Component Weightings (Column K x Column L)	N Adjusted Cost Component Weightings (Column K + Column M)	O Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	29.0%	1.7%	0.5%	29.5%	30.6%
25	Fuel	(2)	11.0%	-53.8%	-5.9%	5.1%	5.3%
27	Equipment	(3)	5.0%	4.5%	0.2%	5.2%	5.4%
28	Disposal	(5)	44.0%	2.3%	1.0%	45.0%	46.6%
29	Transformation	(6)	4.0%	14.6%	0.6%	4.6%	4.8%
30	All Other	(4)	7.0%	1.6%	0.1%	7.1%	7.3%
31	Total		100.0%			96.5%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.
 (2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*
 (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.*
 (4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*
 (5) Consumer Price Index for All Urban Consumers (CUURA421SA0 0000SA0L1E), all items, Los Angeles-Riverside-Orange County - average annual change, capped at 5%.*
 (6) Gate rate at Commerce Waste-to-Energy facility.
 (7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.
 (8) Example rates listed. Adjustment applies to all applicable rate categories.

* See Exhibit 4C.

EXHIBIT 4B

EXAMPLE ROLL-OFF BOX 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	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/Ton	(5)	215.0	220.0	2.3%

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 (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	69.0%	1.7%	1.2%
9	Fuel	(2)	20.0%	-53.8%	-10.8%
10	Equipment	(3)	0.0%	4.5%	0.0%
11	All Other	(4)	11.0%	1.6%	0.2%
12	Service Component Total		100.0%	n/a	-9.4%
13	Refuse/Ton	(5)	100.0%	2.3%	2.3%

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 H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll off Box Pull Rate	\$ 145.00	-9.4%	\$ (13.63)	\$ 131.37
15	Compactor Roll off Box Pull Rate	\$ 165.00	-9.4%	\$ (15.51)	\$ 149.49
16	Refuse/Ton	(5) \$ 42.00	2.3%	\$ 0.97	\$ 42.97

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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	69.0%	1.7%	1.2%	70.2%	77.5%
18	Fuel	(2)	20.0%	-53.8%	-10.8%	9.2%	10.2%
19	Equipment	(3)	0.0%	4.5%	0.0%	0.0%	0.0%
20	All Other	(4)	11.0%	1.6%	0.2%	11.2%	12.3%
21	Total		100.0%			90.6%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.*

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

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

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*

(5) Consumer Price Index for All Urban Consumers (CUURA42ISA0 0000SA0L1E), all items, Los Angeles-Riverside-Orange County - average annual change, capped at 5%.*

(6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

* See Exhibit 4C.

EXHIBIT 4C

EXAMPLE CALCULATION FOR

AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal “and “all other” cost components in Column C.

Consumer Price Index - All Urban Consumers, U.S. City Average
All items less food and energy, CUUR0000SAOL1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235
Average Annual Change:													1.7%

EXHIBIT 5

EXHIBIT DELETED

EXHIBIT 6

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, _____, a _____ corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2010.

a _____ Corporation

SURETY

By: _____
(PRINCIPAL)

By: _____
(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 7

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 the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company 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:

EXHIBIT 8

CITY SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

EXHIBIT 9

OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.38 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.38 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2012.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW; with 48-hours notice, Company will Collect HHW on Customers' scheduled service day. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);

- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and
- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist's paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with a program description, the start date, materials to be collected, and instructions on how to call in for a pickup. Company shall be required to update the City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of the City's "e-book") in public education mailers required under Section 4.3.2.

B. Exclusive Construction and Demolition Debris Collection

City reserves the right to require Company to exclusively Collect all Construction and Demolition Waste generated in the City at rates not to exceed the rates included in Exhibit 3 at any time during the Agreement Term. Company will be required to divert a minimum of 70% of all Construction and Demolition Waste Collected from landfilling under this option. Construction and Demolition Wastes does not apply towards diversion requirements under Section 3.8.1. Such maximum rates shall be adjusted in accordance with Article 6. This does not preclude City from continuing to permit open competition, to select another exclusive hauler for Construction and Demolition Waste, to competitively procure an exclusive Construction and Demolition Waste collector, or to negotiate with Company for Construction and Demolition Waste Collection.

EXHIBIT 10

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

EXHIBIT 11

COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”

DRAFT

FRANCHISE
AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

CROWN DISPOSAL Co., INC.

FOR

INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

* * *

January 19, 2011

DRAFT

FRANCHISE
AGREEMENT
BETWEEN
CITY OF MANHATTAN BEACH
AND
CROWN DISPOSAL CO., INC.
FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

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RECITALS

This Franchise Agreement (Agreement) is entered into this ___ day of _____, 2010, by and between the City of Manhattan Beach (City) and Crown Disposal Co., Inc. (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the City seeks to contract with a solid waste hauler to work together to exceed AB 939 goals by implementing sustainable programs and practices to reduce landfill tonnage, increase producer responsibility, reuse, repair and recycling, and educate the community to sustain the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, in response to a Request for Proposals, Company has submitted a proposal to City and City selected Company on the competitive advantages of that proposal over other proposals received by City; and,

WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 5.24 of the Manhattan Beach City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.2 Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Green Waste, to be Collected by Company pursuant to Section 3.6.3.

1.3 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. 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.

1.4 Agreement

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.5 Section Deleted

1.6 Section Deleted

1.7 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

1.8 Bin

"Bin" means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

1.9 Bulky Waste

"Bulky Waste" means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); Electronic Waste (including stereos,

televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.10 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

1.11 Can

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

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 30 and no greater than 101-gallons.

1.13 City

"City" means the City of Manhattan Beach, a 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.

1.14 Collect/Collection

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

1.15 Commercial and Industrial

"Commercial and Industrial" refers to property, or Owners of property, upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.16 Company

"Company" means Crown Disposal Co., Inc., a California corporation and its officers, directors, employees, agents, companies and subcontractors.

1.17 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.18 Complaint

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.19 Composting

"Composting" means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

1.20 Construction and Demolition Waste

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

1.21 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

1.22 CPI

"CPI" means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index - U.S. city average.

1.23 Customer

"Customer" means the Person having the care and control of any Premises in the City receiving Solid Waste Collection service from the Company.

1.24 Disposal

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

1.25 Disposal Site(s)

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

1.26 Electronic Waste or E-Waste

"Electronic Waste" or "E-Waste" means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

1.27 Environmental Laws

"Environmental Laws" means all federal and State statutes, county, local and the 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 Toxic Substances Control 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.

1.28 Facility

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

1.29 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

1.30 Food Waste

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste programs included in Section 3.2.7, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,
- Tea bags, coffee grounds and filters.

1.31 Green Waste

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

1.32 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.33 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.34 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

1.35 Materials Recovery Facility

“Materials Recovery Facility” means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

1.36 Mixed Waste Processing

“Mixed Waste Processing” means the separation and sorting of recyclables and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

1.37 Multi-Family

"Multi-Family" means pertaining to any Residential Property with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

1.38 Section Deleted

1.39 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.40 Permanent Rolloff Box Service

“Permanent Rolloff Box Service” means the Collection of Solid Waste generated from ongoing operations at a Customer’s place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premise that would otherwise be Collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.41 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, town, city, or special purpose district.

1.42 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.43 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.44 Rate Year

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.45 Recycling

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.46 Recyclable Materials

"Recyclable Materials" means Residential, Commercial or Industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.47 Refuse

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.48 Residential

"Residential" refers to property, or Owners of property, which is used for Residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.49 Rolloff Box

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

1.50 Sand Section

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

1.51 Single-Family

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

1.52 Solid Waste

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.54 State

"State" means the State of California.

1.54 Temporary Service

"Temporary Service" means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a

Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business' ongoing operations is not included.

1.55 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

1.56 Universal Waste

"Universal Waste" means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

1.57 Zero Waste

"Zero Waste" means a focus on reducing landfill tonnage by reducing consumption, minimizing waste, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired or Recycled back into nature or the marketplace.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

2.3 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

2.4 Effective Date

The effective date of this Agreement shall be _____ ("effective date").

2.5 Term of Agreement

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) **Accuracy of Representations.** Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) **Absence of Litigation.** There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) **Furnishing of Insurance and Bonds.** The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) **Effectiveness of the City Council Action.** The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Proposition 218

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of

Article XIID of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIIC, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

City agrees to meet and confer with Company prior to City's termination of this Agreement under this section to determine whether City and Company can negotiate a reduction in Company Compensation to offset the protested rate increase.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

2.9 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;

- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- e) Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- f) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- g) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold.
- m) Hazardous Waste, medical waste, and radioactive waste, regardless of its source;
and,
- n) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the Company under this Agreement. City may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Green Waste from City landscaping maintenance operations, contract services, "niche" Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

The City may direct the Company 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 that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the 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 of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- 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.

2.10.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted

the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

2.12 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.13 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (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 the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event,

this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.15 Business License

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

The work to be done by the Company 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 the Company 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 the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

3.1.1 Residential Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with new Refuse Carts of 96- 64- or 32-gallons, as requested by Customer as described in Section 3.7.1.1. Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

Residential Refuse Cart Processing – Company shall send all Refuse Collected in Residential Refuse Carts for processing to recover Recyclables.

Backyard Service - Customers may request “Backyard Service” for an additional charge in accordance with the approved rate schedule. Backyard Service means that Company removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer’s designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge whether or not pickup was called in. If pickup was not called in, a notice shall be left for the Customer indicating a Cart overage Collection was made.

Company shall provide a three-month grace period at the start of service in which it will leave notices on Carts when overages are Collected, informing Customers as to this new policy, including how to call for an additional or larger Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse placed out for Collection in the Residential Customer’s own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

Company shall provide Bin service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family, Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located.

Upon request, Company shall provide split three and four cubic yard Bins, which have separate Collection compartments in order to accommodate two waste streams in one Container. Company shall be compensated based upon the level of Refuse services received. For example, a split four yard Bin, with two cubic yards of capacity designated for Refuse and two cubic yards designated for Recyclables will be charged the rate for a two cubic yard Refuse Bin, Collected at the frequency at which the Refuse side is Collected.

Customers that require twice per day Collection shall be charged as though they had twice the number of Containers being Collected once per day.

Customers may lease from Company or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

3.1.3.2 Temporary Bin Services

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3.3 Commercial Cart or Can Service

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

3.1.3.4 Locking Bins

Company may charge for locking bin service in accordance with the approved rate schedule. No additional fees shall be permitted for provision or installation of the lock.

3.1.3.5 Scout Service/Push-Out Service

Company may not charge an additional fee for scout service, whereby a second vehicle is used to position the Container for Collection, or push-out service, whereby the driver must move the Container a significant distance for Collection.

3.1.4 Rolloff Box Service

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 3. Customers may lease from Company or third parties compactor Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff Boxes remains within the scope of this Agreement, unless otherwise excluded per Section 2.9.

3.1.5 On-Call Bulky Waste Pickup

Company shall provide Bulky Waste pickup service to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day.

Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)

- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

3.1.5.1 Single and Multi-Family Customers

Single and Multi-Family Customers, whether Bin, or Cart Customers, are entitled to three Bulky Waste pickups per dwelling unit per year at no additional charge, with additional pickups Billed in accordance with the approved rate schedule in Exhibit 3. Customers may place up to three (3) items out for Collection per pick-up.

3.1.5.2 Commercial Customers

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 3, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

3.1.6 Commercial Container Overflow Procedures

3.1.6.1 Service Level Upgrade

Customers using Bins, Roll-Off Boxes, and Commercial Carts and Cans that regularly produce more Solid Waste 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 Container, Company 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 the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container in a three-month period, Company 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 will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period – Upon the third event of an overfilled Container in a three-month period, Company shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

3.1.6.2 Container Overage Fee

If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide new 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Section 3.7.1.1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene);

plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

3.2.2 Commercial Recycling

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

Commercial Recycling Site Visits - Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers' Premises not currently subscribing to recycling service and meet with the Customer for the purpose of

establishing a Recycling Program. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type.

At the end of the first six (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse service levels including number and size of Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

Company will visit all new Customers added after the start of this Agreement within two weeks of the start of new service. Company will continue to conduct on-site visits to Multi-Family Bin and Commercial Customers throughout the term of the Agreement to implement new and optimize existing Recycling programs for each Customer. A list of new account and ongoing account visits, including all the information required above, shall be provided to the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers - Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for six-gallon Rehrig-Pacific Containers were approximately \$5.40 per Container.

3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City's Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
August 1 st , 2011	\$28,000	July 1 st , 2015	\$32,000
July 1 st , 2012	\$29,000	July 1 st , 2016	\$33,000
July 1 st , 2013	\$30,000	July 1 st , 2017	\$34,000
July 1 st , 2014	\$31,000	July 1 st , 2018*	\$35,000

* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

3.2.4 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent Construction and Demolition Waste that is suitable for Recycling from being taken to the landfill by:

- Following the City's Construction and Demolition Debris Diversion requirements of the Municipal Code;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,

- Contacting contractors on a list provided by the City annually to educate them on Construction and Demolition Waste diversion.

3.2.5 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

3.2.6 Universal Waste

Company shall instruct Customers not to set out universal waste for Collection except through programs included in this Agreement specifically tailored for the Collection of such items, including SHARPS Collection programs, Bulky Waste Collection, or the optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green waste, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

3.2.7 Permanent Food-Waste Program

Company shall implement both Residential and Restaurant on-going Food Waste programs within four months of the start of service under this agreement at no additional cost.

Under the Residential Food Waste program, Company shall educate Residential Cart Customers to place Food Waste in their Green Waste Cart for co-Collection. Company shall either Compost the co-Collected material, or sort Food Waste from co-Collected material for processing in a digester and Compost the remaining material.

Under the Restaurant Food Waste program, Company shall offer a combination of approaches to accommodate Food Waste generating Customers, including source-separated Food Waste Collection in separate Containers, co-Collection with Refuse

and/or Collection using split Bins for space-constrained Customers. Food Waste co- Collected with Refuse from Food Waste generating Customers would be reverse sorted to remove non-compostables, with the remainder sent for composting.

3.3 Green Waste Program

3.3.1 Residential Green Waste Collection

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one new 96-, 64- or 32-gallon Green Waste Cart in accordance with Section 3.7.1.1. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

3.3.2 Rolloff Box Service

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.3 Holiday Tree Collection Program

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree

Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they include ornaments, garlands, and tinsel, and stands.

3.3.4 End Uses for Green Waste

Company shall divert Green Waste materials from Disposal. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by CalRecycle.

3.3.5 Compost Bin Distribution

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill Customer a co-pay amount to be determined by City. The difference between the amount billed to the Customer and the actual cost of the bin to the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the City. City may inform Company as to an annual cap or overall cap on the number of compost bins to be distributed.

Company shall develop a public education flyer for this program and provide it to City for distribution. Company, including a Company-provided instructor, shall conduct three annual, one-hour composting classes, in May, July and October of each year.

3.3.6 Compost Give-a-Way

At no additional charge, Company will provide residents with 300 free 30-pound bags per year of half wood shavings/half compost, or provide up to 100 tons of bulk compost per year for community projects such as community or school gardens, or a combination of the above. Company will deliver bags or bulk material for distribution at City events or for use at schools, gardens, residences or other City locations as requested by City. Delivery times will be mutually agreed upon between Company and City.

3.4 Warning Notice

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be

contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

3.5 Commercial Mixed Waste Processing

Company shall process all Bin Refuse, resulting in recovery of a minimum of 3,549 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not include any business instruction and therefore does not need to be placed in outreach materials.

3.6 City Services

3.6.1 City Facilities Collection

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, parks, street maintenance operations, and Street Litter Containers (see Section 3.6.4 below). Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required.

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly dispose of hazardous waste that is generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 10. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

In the event that quantities increase by more than 20% from Exhibit 10 levels, City and Company shall mutually agree to additional compensation due Company based upon verifiable costs incurred by Company.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

3.6.4 Street and Park Litter Containers

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, all Solid Waste deposited in City's Street and Park Litter Containers as necessary to prevent overflow at no additional cost at all existing locations. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during

the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

3.6.5 City Sponsored and Non-City Sponsored Events

The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. This shall include providing Containers to Collect and Dispose of all Solid Waste, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source-separated Recyclables. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes and liners at Company's cost.

3.6.6 Emergency Collection and Disposal Service

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

3.6.7 Sharps Collection Program

Company shall provide Sharps containers to requesting Residential Customers, both Single and Multi-Family Cart and Bin Customers. Containers will be delivered to residents' door. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$15.00 per container. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in Exhibit 9, Company may additionally or alternatively arrange for door-to-door Collection of such containers through this program; however, Company shall continue to deliver Sharps containers to residents' door. "Sharps waste" includes, but is not

limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program. This program will be provided at no additional charge to City or Customers beginning the first day of the start of service under this Agreement.

3.7 Containers

3.7.1 Carts

3.7.1.1 Residential Cart Distribution

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, Customers may request one Cart exchange at no charge each year. After one exchange per year, Customers may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

3.7.1.2 Removal of Existing Containers

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts

and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected. Company is responsible for all costs associated with Container collection and Disposal or Recycling. Company may retain any scrap value received from the Recycling of collected Containers.

3.7.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

Carts shall include a minimum of 30% recycled material and be recyclable.

3.7.1.4 Capacity

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

3.7.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

3.7.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

3.7.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color, matching current colors in distribution. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

City may request that Company use granite lid covers at no additional cost. Otherwise, Cart and Cart lids will be the same color.

3.7.1.8 Cart Labeling

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. The City's logo and, if requested by City, the City website shall appear on the Carts. Company's name and phone number shall be included on a label on the Cart lid (Company's name or logo shall not be visible on the side of the Cart).

3.7.1.9 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Carts. Company shall not hot stamp Company name on Carts.

TRASH, RECYCLING or **GREENWASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English, with graphics and instructions for proper disposal of HHW, and shall place labels on top of all Carts delivered to Customers.

3.7.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

3.7.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70

3.7.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

3.7.2.4 Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

3.7.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

3.7.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

3.7.3 Can Design and Performance Requirements

The Cans shall be manufactured by injection or rotational molding and meet the Can design and performance requirements as specified below. All Cans selected shall be subject to City approval.

3.7.3.1 Capacity

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

3.7.3.2 Can Handles

The Can handles will provide comfortable gripping area for carrying the Can.

3.7.3.3 Can Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

3.7.3.4 Can Colors

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet

degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

3.7.3.5 Identification Markings

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

3.7.3.6 Can Load Capacity

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

3.7.3.7 Can Durability

Cans shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,

- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.3.8 Chemical Resistant

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

3.7.3.9 Reparability or Replacement

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

3.7.4 Cart and Can Ownership and Maintenance Responsibilities

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

3.7.5 Bins and Compactors

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or

replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Company shall remove graffiti at no additional charge from any Container within twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

3.7.6 Rolloff Boxes

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.8 Diversion Requirements

3.8.1 Hauler Diversion Requirements

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation is 70% of the waste Collected by Company under this Agreement during each year of this Agreement; diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to CalRecycle). Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants the City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

3.8.2 City-wide Diversion Rate

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the City under this section that are not otherwise required to be implemented under this Agreement will be implemented in accordance with Section 2.10, under which Company may be entitled to an adjustment in compensation.

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 P.M and 7:30 A.M. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. Company shall adjust the early morning start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven day per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven day per week customers.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this

Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

3.9.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. Company will use Collection vehicles model year 2010 or newer. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) years old. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG) at the start of service under this Agreement. Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the Company in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-Off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three

inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its 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) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) The Company 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. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by

signature of a maintenance supervisor that the repair has been properly performed.

- 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.
- 4) Company shall equip all route vehicles with a GPS tracking system and enable the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

F. City Inspection Per Code. The 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 applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, 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 Manager, which decision shall be final.

3.9.3 Litter Abatement

A. Minimization of Spills. The Company 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 are spilled during Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company 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 the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

3.9.4 Personnel

The Company 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company'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.

The Company 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. The Company 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company 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.

3.9.5 Identification Required

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

3.9.6 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

3.9.8 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

3.9.10 Hiring of Displaced Workers

Company will interview all interested displaced Solid Waste employees that previously worked in the City for prior Solid Waste contractor, and will make offers of employment to all employees meeting Company standards.

3.10 Transportation, Disposal and Processing

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Sites shall be the Puente Hills Landfill, Sunshine Canyon Landfill and Chiquita Canyon Landfill, and the approved waste-to-energy facility shall be the Commerce Refuse-to-Energy Facility (primary) or the Southeast Resource Recovery Facility (back-up). The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery

Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. In the event that City selects a Disposal Site or other Facility, the City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a change in tip fee or transportation costs.

If City directs Company to a facility other than a Solid Waste Facility selected or owned by Company, and use of this Facility adversely affects the ability of the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the City and Company shall meet and confer and mutually agree on revised obligations under Sections 3.8 and 8.3

3.11 Status of Disposal Site

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

3.12 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 Manhattan Beach Solid Waste. Company may request permission from the City for an exception on a case-by-case basis.

3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in the City. The annual route audit information shall include, at 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);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Whether each individual address is Commercial or Multi-Family;
- Number of Residential Dwelling units at each Multi-Family account;
- Service Level per Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted to the Public Works Director and one to the City's billing manager. This summary shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total (Residential Cart, Multi-Family Bin, and Commercial);
- Types of billing and service exceptions observed;
- Number of billing and service exceptions by type;
- Total monthly billing, pre-audit;

- Total monthly billing, post-audit (subsequent to corrections of identified exceptions; and,
- Percentage of billing and service exceptions:
 - Percentage of the number of accounts with errors to the total number of accounts served;
 - Percentage of the “net” change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
 - Percentage of the “absolute” change in net monthly billing as a result of the audit to the total “pre-audit” monthly billing.

The report shall include a description of the procedures followed to complete the annual 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. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company’s plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

3.14 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made, through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company 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. The Company 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 the City. In addition to other required notifications, if the Company observes any substances that 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, the Company will immediately notify the Public Works Director or the Public Works Director's designee.

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

3.15 Hazardous Waste Management Component

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

3.16 Facility Capacity Guarantee

Company guarantees capacity for all Solid Waste to be Collected under this Agreement for the Agreement term at its sister company Community Recycling and Resource Recovery's ("CRRR") Sun Valley transfer station, MRF, organics Facility, C&D Facility and Lamont composting Facility Facilities for the term of this Agreement. CRRR and Company have the same owner and Company has a processing agreement with CRRR.

ARTICLE 4
OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services in subsections A and B below.

A. Compost Bin Co-Pay. The Residential Customers' co-pay for compost bins shall be billed by the Company.

B. Rolloff Box and Temporary Bin Services. In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

4.1.2 City Billing

City shall perform all billing under this contract, other than Rolloff Box service, temporary Bin service, and compost bin co-pays. City reserves the right to direct Company at any time during the Agreement Term to charge Customers for periodic charges such as Bulky Waste pickups, Cart overage pickups, and Bin Container Overage Fees.

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of the City billing Customers. Payment will be based on City's records of services rendered and will be

subject to subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see 4.1.4 below).

4.1.4 Company Responsible for Service Level Accuracy

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt. Failure to notify the City in writing within 45 days shall confirm the Company's approval and acceptance of the payment amount.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

4.1.5 Review of Billings

The Company shall review Billings to customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.6 Suspension of Service Due to Non-Payment

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time

periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.7 Late Fees

Company may assess interest at a rate of 1.5% per month on outstanding balances for services Billed by Company beginning 60 days after invoice is sent. Company may charge insufficient funds fees of no more than \$35.00 per returned check. This section is not applicable to City-billed services, as City pays Company based upon Billings, not receipts.

4.1.8 Franchise Fee

A. Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes Billing of permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

B. Time and Method of Payment

Company shall remit the Franchise Fee payments on or before the thirtieth (30th) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30th) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs),

and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

4.2 Customer Service

4.2.1 Office Hours

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and number of representatives shall be adequate to handle the volume of calls typically experienced on the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

4.2.3 Complaint Documentation

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

4.2.4 Resolution of Customer Complaints

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

4.2.5 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints and assist with waste reduction programs. City shall have the right to approve the Company's choice for a liaison.

Government Liaison shall be the community relations liaison for Manhattan Beach business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his\her physical presence when

requested or appropriate at schools, businesses and business organizations, community events, Environmental Task Force meetings, City Council meetings and workshops, et al.

4.2.6 Service Liaison

Company shall designate in writing a field supervisor (i.e. route manager) as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints, and strategize with City on an on-going basis regarding more efficient Collection practices. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

4.2.7 Customer Service Liaison

Company shall designate a customer service representative to which the City can direct customers that contact the City with Solid Waste service questions. Customer Service Liaison will take responsibility for completing and closing out work orders within the City's designated work order system.

4.2.8 School Outreach Liaison

Company shall designate a School Outreach Liaison to oversee and coordinate all waste reduction activities under Section 4.3.8 below.

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Zero Waste Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to significantly exceed AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods

acceptable to the City. Any outreach material utilizing paper, provided and distributed by the Company, shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall assist the City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to the City. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

- **Initial Cart Selection Mailing** - Company shall prepare and distribute the mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** - At least 30 days prior to August 1, 2011, Company will prepare and mail, using City-provided labels, an initial mailing to Residential and Commercial Customers explaining the transition from the existing programs to the new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information. For Residential Cart Customers, this mailing will be in addition to the initial mailing requesting Cart Customers to select Cart sizes and numbers.
- **Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an "e-book" or "e-magazine" format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.

- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract is in effect, using City-provided mailing labels.
- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City's request and with City's review and approval of the materials. Notices will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.
- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners' associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the Company shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material.

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Zero Waste Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Zero Waste programs.

4.3.5 Use of "Manhattan Beach Recycles" Program Name

The program name "Manhattan Beach Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. City confers a revocable license to Company to use "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

Company shall provide in-unit Recycling Containers to each Multi-Family Bin Customer Dwelling Unit upon request of individual Dwelling Unit, property owner or manager. In-unit Containers shall be hot stamped or labeled with items that may be placed in the Recycling Container, and shall not carry Company logo and shall become the property of the City upon distribution. City logo may be used. Company will provide all property managers and Residents with Bin service with Recycling program guidelines, posters to be placed in laundry rooms, refuse/recyclable container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin Customer service. Company shall contact each Multi-Family Customer building owner or property manager by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the recyclables containers.

Company shall prepare and mail a brochure with recycled content and labeled "Made from Recycled Paper" at least once per year to each Multi-Family Dwelling unit that does not individually receive semi-annual and quarterly notices under Section 4.3.2; brochure shall describe all Solid Waste programs and holiday schedules as they apply to Multi-Family Cart Customers and to Residential Bin Customers.

Company commits a minimum of 865 hours of Company staff, or third-party contractor, time the first year, and 220 each subsequent year, towards meeting Multi-Family outreach efforts as described in this section.

4.3.7 Commercial Outreach Recognition Program

Company commits a minimum of 300 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

Green Business Certification Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with an award to be mutually agreed upon by City and Company.

Zero Waste Green Works – Promoting Recycling at the Work Place

Company will provide businesses with recycled-content prizes such as reusable water bottles, reusable grocery bags, and/or other incentives for managers to provide to employees who contribute to the business’ Zero Waste green program.

Company will provide business managers with promotional information, flyers and instructional posters made from recycled paper and labeled “Made from Recycled Paper” to implement a comprehensive waste reduction and recycling program, including information on what cannot be placed in the recycling container (i.e.: HHW).

Company shall provide initial and on-going consultation and support to businesses who request it to ensure long term success of their business' waste reduction and recycling program.

4.3.8 School Zero Waste Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District and private schools, to promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative recycling containers to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;
- Conduct a minimum of one assembly promoting recycling at each school in the City each year;
- Education and training on proper recycling and waste reduction techniques to students and teachers and web-based resources for the district and schools' websites;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program and participate in school assemblies or City Council meetings for award;
- Free compost for school district gardens (see Section 3.3.6);
- Proper signage for all school sites;

- Provide teachers with sample lesson plans and activity sheets made from recycled paper and labeled "Made from Recycled Paper" on relevant topics on an as requested basis; and,
- Contact each school at least once per semester to offer all services included in this section. City or school may request that more frequent contacts be made. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at schools, Company shall make an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management, janitorial staff, faculty and student volunteers to ensure that improved recycling and waste reduction techniques have been implemented.

Company commits a minimum of 270 hours of Company staff, or third-party contractor, time per year towards meeting School outreach efforts as described in this section. Time allocated to contacting schools to offer programs shall not be counted towards minimum.

4.3.9 Recycling Facility Tours

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

4.3.10 Take-Back Programs

Company will work with local businesses through the Chamber of Commerce to identify take-back and Recycling opportunities.

4.3.11 Construction Waste Disposal Assistance

Company provides assistance with LEED project requirements for contractors requesting Construction and Demolition Waste services.

4.4 Waste Generation/Characterization Studies

Annually, Company will perform a waste stream analysis to identify all components of the Residential and Commercial waste streams in order to help direct education and outreach efforts to increase participation in all Recycling programs.

Additionally, Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Company 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 (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Company 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, as City may request assistance above and beyond that provided by Company annually.

ARTICLE 5

COMPANY COMPENSATION AND RATES

5.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

5.2 Initial Rates

The Company Compensation from the start of service under this Agreement through June 30, 2013 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2013, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline. If any rates would decline based upon Section 5.4 calculations and a rate decrease is not implemented, the subsequent rate adjustment shall be based upon the average changes in indices since previous rate adjustment instead of the average change over the prior year.

The rate adjustments shall apply to the Company Compensation rates included in Exhibit 3. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

5.4 Method of Adjustments

5.4.1 General

For Rate Years beginning July 1, 2013, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

5.4.2 Cost Components for Rate Adjustment Indices

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

Cost Category	Initial Weightings		Rate Adjustment Factor (1)
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	26%	38%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	5%	21%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	26%	7%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste/ Organics	12%	N/A	Actual change in average per ton tipping fee paid by Contractor for Contractor's Disposal of tonnage Collected under this Agreement, weighted based upon the number of tons Disposed at each landfill, capped at the dollar change in the Disposal gate rate per ton at Puente Hills Landfill (Puente Hills Transfer Station, after landfill closure) (2)(3)
Transformation	7%	N/A	Actual change in the per ton gate rate at the Commerce Waste-to-Energy facility
All Other	24%	34%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

(2) Average Disposal Cost Per Ton - For the July 1, 2013 rate adjustment request, the "Old Index" shall be the average gate rate for the period from June 1, 2011 to December 31, 2011.

For subsequent adjustments, the "New Index" under Column B in Example Adjustments in Exhibits 4A and 4B shall be the average gate rate per Disposed ton paid by Company for City residue for the calendar year ended December 31 prior to the rate adjustment request. The "Old Index" under Column A shall be the "New Index" from the prior rate adjustment. Company must submit to the City its disposal tonnage by facility and gate rate for the relevant periods for each rate adjustment request.

(3) Cap On Disposal Increase - In the event that the dollar (not percentage) increase in Company's average tipping fee exceeds that year's dollar increase at the Puente Hills Landfill/MRF, the additional increase in excess of the cap will roll forward to subsequent adjustments only to the extent that the increase does not exceed this dollar increase cap in any year.

5.4.3 Rate Adjustment Steps

Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One – Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 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.

Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

5.5 Extraordinary Adjustments

Company may request an adjustment to maximum rates at reasonable times other than that allowed under Section 5.3 and 5.4 of this Agreement in the event of extraordinary changes in the cost of providing service under this Agreement. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of the rate based on an increase or decrease in a direct per ton surcharge assessed at the disposal site or transfer station by Federal, State or local regulatory agencies after the effective date of this Agreement, to the extent the percentage change in these adjustments exceed the cumulative percentage change in the Disposal component adjustments granted under Section 5.3.

For each request for an adjustment to the maximum rates that Company may charge Customers brought pursuant to this section, Company 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 Company in preparing the estimate. Company 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 Company's annual financial statements in connection with the City's review of Company's rate adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

City shall review Company's request and, in City's sole judgment and absolute 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 Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.
- c) Results of the most recent route audit as described in Section 3.13.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results,

feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

6.2 Performance Satisfaction Survey

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1. City shall notify Company of its desire for such a survey at least 90 days in advance of the Solid Waste Services and Performance Review Meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Company. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Company to send out separate Single Family and Multiple-Family/Commercial surveys. Company shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may choose to write or re-write the survey. City may require that Company have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

The Company 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, the Company agrees to conduct data Collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. 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 the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

7.2.3 Solid Waste Service Records

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for limited services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick ups;
- f) Number of Refuse, Recycling, and Green Waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

7.2.4 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

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 Biennial Audit

Company shall fund biennial audits as described below. 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. The first audit will be based on the Company's reports and records for Fiscal Year 2012 and may be conducted as soon as relevant data, such as tonnage, is available. Audits will be performed every other year thereafter (the biennial audit). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

7.2.7 Payments and Refunds

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

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 efficiency of operations;
- b) Evaluate past and expected progress towards significantly exceeding AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under

penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

Public Works Director (or designated representative)
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.

- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.
- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.

7.3.3 Quarterly Reports

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling programs with Company, and their service levels.

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated

companies, and of other entities that may perform services under this Agreement, as the City may request.

- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
- f) Number of routes and route hours per day by type of service.

7.3.5 Financial Report

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing the Company'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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

7.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

7.5 Right to Inspect Records

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, 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) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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 or active negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement. Company's indemnification of the City is subject to all of the following restrictions:

- a. The Company's obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et seq.* of the Public Resources Code.
- b. No payment required under the company's obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company's breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company's breach or non-compliance resulted from City's action

or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

8.4 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a) The City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
- b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
- c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
- d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. The Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

8.5 Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to

cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the 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, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.7 Performance Bond Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 3.8, will not be substantiated until after the final service date. Therefore, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (18) months after the end of the Term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

8.8 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

8.9 Pavement Damage

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by Company's, or Company's subcontractor's, vehicles or employees. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

9.5 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company 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 Company is entered.
- E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand,

with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company 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.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company 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.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

10.2 Criminal Activity of Company

Should the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Company has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty and any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain. If the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. The City finds, and the Company 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 the City as a result of a breach by the Company of its 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) the services provided under 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 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 Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the 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

- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) such occurrences annually:

\$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually:

\$150.00
- f) For each failure to deliver a Rolloff Box or temporary Bin within 48 hours of a Customer's request:

\$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed:

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:

\$250.00
- c) For each failure to notify City within one (1) hour from the time Company has remedied a complaint forwarded by City.

\$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers:

\$150.00
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company.

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversification Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the 70% diversion requirement per Section 3.8.1, beginning with the first full calendar year 2012, and including any partial calendar year at the end of the term: \$25 per ton

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 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 11.8: \$1,000/day

The 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.

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

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes,

other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Company shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify Public Works Director sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Company shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Company is not excused from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 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.

Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a "reverse 911" contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company 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, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

10.6 Assurance of Performance

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

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

11.2 Compliance with Law

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

11.3 Governing Law

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

11.4 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.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) Company shall pay City its reasonable expenses for attorney's and/or consultant'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 Company 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.
- b) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided;

- 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 Company's operations.
- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the 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 sale of operations conducted by the Company 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 the City with a complete list of 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties 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.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Company shall be responsible for coordinating transfer immediately after Company's final pickups, so as not to disrupt service. Company 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. Company shall provide means of access to the new service provider at least one full Working 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.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that customers neither need to find storage for two sets of containers nor go without a container for an inconvenient length of time.

11.9 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.

11.10 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 that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 The Company's Investigation

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

11.12 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

11.13 Notice

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

If to the City: City Manager
 City of Manhattan Beach
 1400 Highland Avenue

Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

And to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to the Company: General Manager
Crown Disposal Co., Inc.
9189 De Garmo Ave.
Sun Valley, CA 91352

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

11.14 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such

designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

11.15 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of 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 under Section 10 of this Agreement.

11.16 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. If changes to the municipal code of the City made after the execution of this Agreement are in conflict with this Agreement, the terms and conditions set forth in this Agreement shall prevail.

11.17 Privacy

The Company 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 the Company 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 so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.18 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

11.19 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

11.20 Section Deleted

11.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

12.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

12.4 Interpretation

This Agreement, including the exhibits 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.

12.5 Agreement

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

12.6 Severability

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

12.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH

("City")

ATTEST: _____
CITY CLERK

By: _____
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

CROWN DISPOSAL COMPANY, INC.
("COMPANY")

By: Timothy Fry

City Attorney

Name: Timothy Fry

Title: General Manager

EXHIBIT 1
COMPANY PROPOSAL

EXHIBIT 2
PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 3
MAXIMUM INITIAL COMPANY COMPENSATION

Residential Monthly Rates (through June 30, 2013)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate		
	Standard Service	Extra Refuse Cart	Backyard Service Surcharge (2)
96-gallon refuse ⁽¹⁾	\$ 14.55	\$ 8.00	\$ 6.00
64-gallon refuse ⁽¹⁾	\$ 10.55	\$ 6.00	\$ 6.00
35-gallon refuse ⁽¹⁾	\$ 6.55	\$ 4.00	\$ 6.00

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building	
	Standard Service	Backyard Service Surcharge (2)
2 Dwelling Units	\$ 21.10	\$ 12.00
3 Dwelling Units	\$ 31.65	\$ 18.00
4 Dwelling Units	\$ 42.20	\$ 24.00
5 Dwelling Units	\$ 52.75	\$ 30.00
6 Dwelling Units	\$ 63.30	\$ 36.00
7 Dwelling Units	\$ 73.85	\$ 42.00
8 Dwelling Units	\$ 84.40	\$ 48.00
9 Dwelling Units	\$ 94.95	\$ 54.00

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

Note: Additional refuse carts for customers with 2 to 9 units, and additional recycling and green waste carts for all residential cart customers shall be provided at no additional charge.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2013)
Commercial Bin Rates

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 20.00	\$ 38.00	\$ 56.00	\$ 74.00	\$ 92.00	\$ 110.00	\$ 128.00	\$ 3.50
32-Gallon Cart	\$ 20.00	\$ 38.00	\$ 56.00	\$ 74.00	\$ 92.00	\$ 110.00	\$ 128.00	\$ 3.50
64-Gallon Cart	\$ 40.00	\$ 76.00	\$ 112.00	\$ 148.00	\$ 184.00	\$ 220.00	\$ 256.00	\$ 7.00
96-Gallon Cart	\$ 60.00	\$ 114.00	\$ 168.00	\$ 222.00	\$ 276.00	\$ 330.00	\$ 384.00	\$ 10.00
2 Cubic Yard	\$ 72.00	\$ 105.11	\$ 145.00	\$ 185.17	\$ 220.19	\$ 290.26	\$ 350.30	\$ 19.35
3 Cubic Yard	\$ 90.01	\$ 133.34	\$ 187.78	\$ 222.22	\$ 266.65	\$ 355.53	\$ 444.42	\$ 29.00
4 Cubic Yard	\$ 107.84	\$ 161.75	\$ 215.67	\$ 269.59	\$ 323.51	\$ 431.35	\$ 539.19	\$ 38.69
6 Cubic Yard	\$ 136.63	\$ 207.94	\$ 277.27	\$ 346.59	\$ 415.92	\$ 554.56	\$ 693.18	\$ 58.01
2 Cubic Yard Compactor	\$ 119.65	\$ 179.40	\$ 239.19	\$ 302.17	\$ 358.81	\$ 478.45	\$ 598.19	\$ 33.04
3 Cubic Yard Compactor	\$ 152.57	\$ 228.86	\$ 307.28	\$ 381.40	\$ 457.58	\$ 610.13	\$ 762.69	\$ 49.15
4 Cubic Yard Compactor	\$ 185.72	\$ 278.53	\$ 371.39	\$ 464.18	\$ 557.09	\$ 742.74	\$ 928.55	\$ 66.64
6 Cubic Yard Compactor	\$ 239.62	\$ 359.42	\$ 479.25	\$ 599.03	\$ 718.83	\$ 958.45	\$ 1,198.07	\$ 100.27
3 Cubic Yard Split Bin (1)	\$ 68.00	\$ 95.11	\$ 135.00	\$ 175.17	\$ 210.19	\$ 280.26	\$ 340.30	\$ 19.35
4 Cubic Yard Split Bin (1)	\$ 72.00	\$ 105.11	\$ 145.00	\$ 185.17	\$ 220.19	\$ 290.26	\$ 350.30	\$ 29.00

(1) Assumes half of capacity is for refuse and half for recyclable material.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2013)

Rolloff Box Rates

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	\$ 140.00 per pull
Compactor Box, Any Size	\$ 178.00 per pull
Rolloff Per Ton Charges	
Refuse Disposal	\$ 39.75 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 36.00 per ton
Additional Container Rental - (for boxes emptied less than 3x/ month)	
Standard Box, Any Size	\$ - per week
Compactor Box, Any Size	\$ 25.00 per week

Optional C&D Rates

Rate Per Pull, Excluding Disposal	
25-40 cubic yard roll-off box	\$ 140.00 per pull
Low Boy (10 cubic yard) roll-off box	\$ 140.00 per pull
Rolloff Per Ton Charges	
Mixed Loads of C&D Debris	\$ 39.75 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
Temporary Bin Service	
First Dump, including delivery and disposal	\$ 75.00 per dump
Additional dumps, including disposal	\$ 75.00 per dump

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2013)
Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 66.75	\$ 75.00	\$ 83.25	\$ 99.75
Each Additional Dump	\$ 50.25	\$ 75.00	\$ 99.75	\$ 150.00
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)

EXHIBIT 4A

EXAMPLE CART & BIN RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices

Row	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/Column A) -1)
1	Labor	(1)	107.30	109.15	1.7%
2	Fuel	(2)	344.0	159.1	-53.8%
3	Equipment	(3)	118.9	124.3	4.5%
4	Disposal	(5)	\$ 28.00	\$ 30.00	7.1%
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%
6	All Other	(4)	215.8	219.2	1.6%

Step Two: Determine components

Row	Adjustment Factor	Index	D Cost Factor Category Weighted as a % of Component Total (7)	E Percent Change In Index (from Column C)	F Total Weighted Change (Columns D x E)
7	Labor	(1)	26.0%	1.7%	0.4%
8	Fuel	(2)	5.0%	-53.8%	-2.7%
9	Equipment	(3)	26.0%	4.5%	1.2%
10	Disposal	(5)	12.0%	7.1%	0.9%
11	Transformation	(6)	7.0%	14.6%	1.0%
12	All Other	(4)	24.0%	1.6%	0.4%
13	Total		100.0%		1.2%

Step Three: Apply percentage change to rates

Row	Rate Category	G Current Contractor Rate (8)	H Total Weighted Percentage Change (from Column F)	I Rate Increase or Decrease (Column G x Column H)	J Adjusted Rate (Column G + Column I)
14	64-gallon Cart Service	\$ 10.56	1.2%	\$ 0.13	\$ 10.68
15	2 unit Service	\$ 21.10	1.2%	\$ 0.25	\$ 21.35
16	1 unit backyard surcharge	\$ 12.00	1.2%	\$ 0.14	\$ 12.14
17	2 unit backyard surcharge	\$ 18.00	1.2%	\$ 0.22	\$ 18.22
18	Extra bulky item	\$ 21.60	1.2%	\$ 0.26	\$ 21.86
19	Special Pickup/Cart Ov.	\$ 5.00	1.2%	\$ 0.06	\$ 5.06
20	Commercial Can	\$ 20.00	1.2%	\$ 0.24	\$ 20.24
21	3yd bin, 1xweek	\$ 90.01	1.2%	\$ 1.08	\$ 91.09
22	3yd comp., 1xweek	\$ 152.57	1.2%	\$ 1.83	\$ 154.40
23	3yd bin, extra pickup	\$ 29.00	1.2%	\$ 0.35	\$ 29.35

Step Four: Re-weight cost components

Row	Adjustment Factor	Index	K Cost Component (Column D)	L Percent Change in Index (Column E)	M Change in Cost Component Weightings (Column K x Column L)	N Adjusted Cost Component Weightings (Column K + Column M)	O Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	26.0%	1.7%	0.4%	26.4%	26.1%
25	Fuel	(2)	5.0%	-53.8%	-2.7%	2.3%	2.3%
27	Equipment	(3)	26.0%	4.5%	1.2%	27.2%	26.9%
28	Disposal	(5)	12.0%	7.1%	0.9%	12.9%	12.7%
29	Transformation	(6)	7.0%	14.6%	1.0%	8.0%	7.9%
30	All Other	(4)	24.0%	1.6%	0.4%	24.4%	24.1%
31	Total		100.0%			101.2%	100.0%

(1) Employment Cost Index CIU201000032000001, Total compensation, Private industry, Index number, Transportation and material moving.

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

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

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*

(5) Average actual change per ton in disposal costs to contractor, capped at no more than the dollar change in per ton disposal gate rate at the Puente Hills Landfill/MRF.

(6) Gate rate at Commerce Waste-to Energy Facility.

(7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

(8) Example rates listed. Adjustment applies to all applicable rate categories.

* See Exhibit 4C

EXHIBIT 4B

EXAMPLE ROLL-OFF BOX 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	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/ Ton	(5)	\$ 28.00	\$ 30.00	7.1%

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 (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	38.0%	1.7%	0.6%
9	Fuel	(2)	21.0%	-53.8%	-11.3%
10	Equipment	(3)	7.0%	4.5%	0.3%
11	All Other	(4)	34.0%	1.6%	0.5%
12	Service Component Total		100.0%	n/a	-9.9%
13	Refuse/ Ton	(5)	100.0%	7.1%	7.1%

Step Three: Apply percentage change to rates

Row	Rate Category	Index	G	H	I	J
			Current Customer Rate	Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll-off Box Pull Rate		\$ 140.00	-9.9%	\$ (13.86)	\$ 126.14
15	Compactor Roll-off Box Pull Rate		\$ 178.00	-9.9%	\$ (17.62)	\$ 160.38
16	Refuse/ Ton	(5)	\$ 39.75	7.1%	\$ 2.82	\$ 42.57

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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	38.0%	1.7%	0.6%	38.6%	42.8%
18	Fuel	(2)	21.0%	-53.8%	-11.3%	9.7%	10.8%
19	Equipment	(3)	7.0%	4.5%	0.3%	7.3%	8.1%
20	All Other	(4)	34.0%	1.6%	0.5%	34.5%	38.3%
21	Total		100.0%			90.1%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.*

(2) Producer Price Index, WPU: 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

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

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*

(5) Average actual change per ton in disposal costs to contractor, capped at no more than the dollar change in per ton disposal gate rate at the Puente Hills Landfill/MRF. (Same percentage as for cart/bin adjustment)

(6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

* See Exhibit 4C.

EXHIBIT 4C

EXAMPLE CALCULATION FOR

AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal” and “all other” cost components in Column C.

Consumer Price Index - All Urban Consumers, U.S. City Average
All items less food and energy, CUUR0000SAOL1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235
Average Annual Change:													1.7%

EXHIBIT 5

EXHIBIT DELETED

EXHIBIT 6

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, _____, a _____ corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2010.

a _____ Corporation

SURETY

By: _____
(PRINCIPAL)

By: _____
(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 7

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 the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company 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:

EXHIBIT 8

CITY SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

EXHIBIT 9

OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.55 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.55 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2013.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);

- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and
- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist's paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with a program description, the start date, materials to be collected, and instructions on how to call in for a pickup. Company shall be required to update the City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of the City's "e-book") in public education mailers required under Section 4.3.2.

B. Exclusive Construction and Demolition Debris Collection

City reserves the right to require Company to exclusively Collect all Construction and Demolition Waste generated in the City at rates not to exceed the rates included in Exhibit 3 at any time during the Agreement Term. Company will be required to divert a minimum of 70% of all Construction and Demolition Waste Collected from landfilling under this option. Construction and Demolition Wastes does not apply towards diversion requirements under Section 3.8.1. Such maximum rates shall be adjusted in accordance with Article 6. This does not preclude City from continuing to permit open competition, to select another exclusive hauler for Construction and Demolition Waste, to competitively procure an exclusive Construction and Demolition Waste collector, or to negotiate with Company for Construction and Demolition Waste Collection.

EXHIBIT 10

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

EXHIBIT 11

COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”

DRAFT

FRANCHISE

AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

USA WASTE OF CALIFORNIA, INC.

DBA WASTE MANAGEMENT OF LOS ANGELES

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

* * *

January 20, 2011

DRAFT

FRANCHISE
AGREEMENT
BETWEEN
CITY OF MANHATTAN BEACH
AND
USA WASTE OF CALIFORNIA, INC.
DBA WASTE MANAGEMENT OF LOS ANGELES
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MANAGEMENT SERVICES

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10. City Hazardous Waste Manifest
11. Commitment to Environmental Sustainability

RECITALS

This Franchise Agreement (Agreement) is entered into this __ day of _____, 2011, by and between the City of Manhattan Beach (City) and USA Waste of California, Inc. dba Waste Management of Los Angeles (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the City seeks to contract with a solid waste hauler to work together to exceed AB 939 goals by implementing sustainable programs and practices to reduce landfill tonnage, increase producer responsibility, reuse, repair and recycling, and educate the community to sustain the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, in response to a Request for Proposals, Company has submitted a proposal to City and City selected Company on the competitive advantages of that proposal over other proposals received by City; and,

WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 5.24 of the Manhattan Beach City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.2 Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Green Waste, to be Collected by Company pursuant to Section 3.6.3.

1.3 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. 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.

1.4 Agreement

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.5 Bagster® Bag

"Bagster® Bag" means a soft-sided polypropylene Container that can hold up to 3,000 pounds of Solid Waste, is purchased by the Customer at a local hardware or home supply store, and is Collected by Company using a special vehicle with an overhead crane.

1.6 Bagster® Service

"Bagster® Service" means a method for Residential or Commercial and Industrial Customers to arrange for Collection of Solid Waste as an alternative to temporary Bin or temporary Rolloff Box service, using a Bagster® bag. Company will provide for Collection/processing of the Bagster® bag. Bagster® Service is a Temporary Service. The rate for Bagster® Service shall be a reasonable rate negotiated between the Customer and Company.

1.7 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

1.8 Bin

“Bin” means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

1.9 Bulky Waste

“Bulky Waste” means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); Electronic Waste (including stereos, televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.10 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

1.11 Can

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

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 30 and no greater than 101-gallons.

1.13 City

"City" means the City of Manhattan Beach, a 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.

1.14 Collect/Collection

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

1.15 Commercial and Industrial

"Commercial and Industrial" refers to property, or Owners of property, upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.16 Company

"Company" means USA Waste of California, Inc. dba Waste Management of Los Angeles, a Delaware corporation and its officers, directors, employees, agents, companies and subcontractors.

1.17 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.18 Complaint

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.19 Composting

“Composting” means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

1.20 Construction and Demolition Waste

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

1.21 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

1.22 CPI

“CPI” means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index – U.S. city average.

1.23 Customer

“Customer” means the Person having the care and control of any Premises in the City receiving Solid Waste Collection service from the Company.

1.24 Disposal

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

1.25 Disposal Site(s)

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

1.26 Electronic Waste or E-Waste

“Electronic Waste” or “E-Waste” means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular

phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as “brown goods.”

1.27 Environmental Laws

"Environmental Laws" means all federal and State statutes, county, local and the 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 Toxic Substances Control 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.

1.28 Facility

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

1.29 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

1.30 Food Waste

“Food Waste” means Solid Waste that may be Collected as part of the Food Waste pilot programs included in Sections 3.2.7 and 3.2.8, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,

- Tea bags, coffee grounds and filters.

1.31 Green Waste

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

1.32 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.33 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.34 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

1.35 Materials Recovery Facility

"Materials Recovery Facility" means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

1.36 Mixed Waste Processing

"Mixed Waste Processing" means the separation and sorting of recyclables and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

1.37 Multi-Family

"Multi-Family" means pertaining to any Residential Property with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

1.38 Section Deleted

1.39 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.40 Permanent Rolloff Box Service

"Permanent Rolloff Box Service" means the Collection of Solid Waste generated from ongoing operations at a Customer's place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premise that would otherwise be Collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for

occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.41 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, town, city, or special purpose district.

1.42 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.43 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.44 Rate Year

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.45 Recycling

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.46 Recyclable Materials

"Recyclable Materials" means Residential, Commercial or Industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.47 Refuse

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.48 Residential

"Residential" refers to property, or Owners of property, which is used for Residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.49 Rolloff Box

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

1.50 Sand Section

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

1.51 Single-Family

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

1.52 Solid Waste

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.54 State

"State" means the State of California.

1.54 Temporary Service

“Temporary Service” means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business’ ongoing operations is not included.

1.55 Transformation

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. “Transformation” does not include composting.

1.56 Universal Waste

“Universal Waste” means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

1.57 Zero Waste

“Zero Waste” means a focus on reducing landfill tonnage by reducing consumption, minimizing waste, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired or Recycled back into nature or the marketplace.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

2.3 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

2.4 Effective Date

The effective date of this Agreement shall be _____ ("effective date").

2.5 Term of Agreement

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) Effectiveness of the City Council Action. The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Proposition 218

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of

Article XIID of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIIC, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

City agrees to meet and confer with Company prior to City's termination of this Agreement under this section to determine whether City and Company can negotiate a reduction in Company Compensation to offset the protested rate increase.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

2.9 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;

- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- e) Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- f) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- g) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold;
- m) Collection using Customer-provided Containers for one-time accumulation of material, and removal of Container for Disposal/processing. This exclusion is intended to include programs providing alternative methods of temporary Collection service that exclude the use of Bins, such as Company's Bagster®

program as defined in Sections 1.5 and 1.6. This exclusion is not intended to permit an alternative to permanent Refuse Collection service;

- n) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- o) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the Company under this Agreement. City may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Green Waste from City landscaping maintenance operations, contract services, “niche” Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

The City may direct the Company 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 that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the 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 of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- 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.

2.10.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within

ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

2.12 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.13 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (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 the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.15 Business License

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

The work to be done by the Company 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 the Company 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 the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

3.1.1 Residential Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with Refuse Carts of 96-64- or 32-gallons, as requested by Customer as described in Sections 3.7.1.1 and 3.7.7. Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

Customers may request “Backyard Service” for an additional charge in accordance with the approved rate schedule. Backyard Service means that Company removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer’s designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

Company shall replace all Carts (Refuse, Recycling and Green Waste) with lids closed after emptying them.

3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge whether or not pickup was called in. If pickup was not called in, a notice shall be left for the Customer indicating a Cart overage Collection was made.

Company shall provide a three-month grace period at the start of service in which it will leave notices on Carts when overages are Collected, informing Customers as to this new policy, including how to call for an additional or larger Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse placed out for Collection in the Residential Customer’s own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

Company shall provide Bin service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family, Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located.

Upon request, Company shall provide split two, three and four cubic yard Bins, which have separate Collection compartments in order to accommodate two waste streams in one Container. Company shall be compensated based upon the level of Refuse services received. For example, a split four yard Bin, with two cubic yards of capacity designated for Refuse and two cubic yards designated for Recyclables will be charged the rate for a two cubic yard Refuse Bin, Collected at the frequency at which the Refuse side is Collected.

Customers that require twice per day Collection shall be charged as though they had twice the number of Containers being Collected once per day.

Customers may lease from Company or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

3.1.3.2 Temporary Bin Services

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3.3 Commercial Cart or Can Service

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

3.1.3.4 Locking Bins

Company may charge for locking bin service in accordance with the approved rate schedule. No additional fees shall be permitted for provision or installation of the lock.

3.1.3.5 Scout Service/Push-Out Service

Company may not charge an additional fee for scout service, whereby a second vehicle is used to position the Container for Collection, or push-out service, whereby the driver must move the Container a significant distance for Collection.

3.1.4 Rolloff Box Service

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 3. Customers may lease from Company or third parties compactor Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff Boxes remains within the scope of this Agreement, unless otherwise excluded per Section 2.9.

3.1.5 On-Call Bulky Waste Pickup

Company shall provide Bulky Waste pickup service to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day.

Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)

- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

3.1.5.1 Single and Multi-Family Customers

Single and Multi-Family Customers, whether Bin, or Cart Customers, are entitled to three Bulky Waste pickups per dwelling unit per year at no additional charge, with additional pickups Billed in accordance with the approved rate schedule in Exhibit 3. Customers may place up to three (3) items out for Collection per pick-up.

3.1.5.2 Commercial Customers

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 3, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

3.1.6 Commercial Container Overflow Procedures

3.1.6.1 Service Level Upgrade

Customers using Bins, Roll-Off Boxes, and Commercial Carts and Cans that regularly produce more Solid Waste 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 Container, Company 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 the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container in a three-month period, Company 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 will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period – Upon the third event of an overfilled Container in a three-month period, Company shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

3.1.6.2 Container Overage Fee

If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Sections 3.7.1.1 and 3.7.7. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene);

plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

3.2.2 Commercial Recycling

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

Commercial Recycling Site Visits - Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers' Premises not currently subscribing to recycling service and meet with the Customer for the purpose of

establishing a Recycling Program. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type.

At the end of the first six (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse service levels including number and size of Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

Company will visit all new Customers added after the start of this Agreement within two weeks of the start of new service. Company will continue to conduct on-site visits to Multi-Family Bin and Commercial Customers throughout the term of the Agreement to implement new and optimize existing Recycling programs for each Customer. A list of new account and ongoing account visits, including all the information required above, shall be provided to the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers – Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for four-gallon Rehrig-Pacific Containers with diamond cut-outs were approximately \$5.00 per Container.

3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City's Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
August 1 st , 2011	\$28,000	July 1 st , 2015	\$32,000
July 1 st , 2012	\$29,000	July 1 st , 2016	\$33,000
July 1 st , 2013	\$30,000	July 1 st , 2017	\$34,000
July 1 st , 2014	\$31,000	July 1 st , 2018*	\$35,000

* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

3.2.4 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent Construction and Demolition Waste that is suitable for Recycling from being taken to the landfill by:

- Following the City's Construction and Demolition Debris Diversion requirements of the Municipal Code;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,

- Contacting contractors on a list provided by the City annually to educate them on Construction and Demolition Waste diversion.

3.2.5 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

3.2.6 Universal Waste

Company shall instruct Customers not to set out universal waste for Collection except through programs included in this Agreement specifically tailored for the Collection of such items, including SHARPS Collection programs, Bulky Waste Collection, or the optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green waste, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

3.2.7 Residential Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Residential Cart Customers. Program shall be subject to City approval. Company shall conduct the approved Residential food waste pilot program at no additional cost to City or ratepayers, beginning July 1, 2012 (unless start date is extended by City).

Pilot program shall be conducted for a minimum of six months. Participants shall include one full Residential route for one day each week. Company shall develop, produce and deliver public education materials to all Customers on the participating route. Materials shall be subject to advance City approval.

Company shall collect baseline tonnage data from this route for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.2.8 Commercial Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Commercial Food Waste generating Customers. Program shall be subject to City approval. Company shall implement a Commercial Food Waste pilot program for a minimum of six months beginning July 1, 2012 (unless start date is extended by City) for 10% of Food Waste generating Commercial Customers in the City at no additional cost to either City, participants or rate payers.

Prior to the start of the pilot program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Refuse capacity prior to the start of the pilot. Company collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of food waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Commercial food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.3 Green Waste Program

3.3.1 Residential Green Waste Collection

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one 96-, 64- or 32-gallon Green Waste Cart in accordance with Sections 3.7.1.1 and 3.7.7. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

3.3.2 Rolloff Box Service

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.3 Holiday Tree Collection Program

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they include ornaments, flocking, garlands, and tinsel, and stands.

3.3.4 End Uses for Green Waste

Company shall divert Green Waste materials from Disposal. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by CalRecycle.

3.3.5 Compost Bin Distribution

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill Customer a co-pay amount to be determined by City. The difference between the amount billed to the Customer and the actual cost of the bin to the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the City. City may inform Company as to an annual cap or overall cap on the number of compost bins to be distributed.

Company shall develop a public education flyer for this program and provide it to City for distribution. Company, including a Company-provided instructor, shall conduct five annual, one-hour composting classes, in May, July and October of each year and at two additional times to be determined in coordination with City.

3.4 Warning Notice

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

3.5 Commercial Mixed Waste Processing

Company shall send sufficient tons of Bin Refuse for processing to recover a minimum of 1,365 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

3.6 City Services

3.6.1 City Facilities Collection

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, parks, street maintenance operations, and Street Litter Containers (see Section 3.6.4 below). Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required.

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly dispose of hazardous waste that is generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 10. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

In the event that quantities increase by more than 20% from Exhibit 10 levels, City and Company shall mutually agree to additional compensation due Company based upon verifiable costs incurred by Company.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

3.6.4 Street and Park Litter Containers

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, all Solid Waste deposited in City's Street and Park Litter Containers as necessary to prevent overflow at no additional cost at all existing locations. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

3.6.5 City Sponsored and Non-City Sponsored Events

City-Sponsored Events - The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. This shall include providing Containers to Collect and Dispose of all Solid Waste, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source-separated Recyclables. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

Non-City Sponsored Events - Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes at cost. Liners, above the reasonable amount of liners provided to non-City sponsored events for use with the reusable Refuse and Recycling stations as described below, at Company's cost. At no additional cost, Company will assist event venues and planners with planning for Solid Waste and Recycling needs and to maximize diversion for events.

Reusable Refuse and Recycling Stations - Company will provide at no additional cost temporary use of up to 50 reusable Refuse and Recycling stations for events at any one time, to be used at either City or non-City sponsored events. Company may request a reasonable refundable deposit for usage at non-City sponsored events. City will provide a reasonable amount of bags/liners for these stations for non-City sponsored events at no additional cost, with bags/liners above a reasonable amount provided at cost. Bags/liners for stations will be provided for City-sponsored events at no additional cost.

3.6.6 Emergency Collection and Disposal Service

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/ tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

3.6.7 Sharps Collection Program

Company shall provide Sharps containers to requesting Residential Customers, both Single and Multi-Family Cart and Bin Customers. Containers will be delivered to residents' door within one week of request. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$27.50 per container; however, if City implements the door-to-door HHW collection program per Exhibit 9.A, Company shall provide unlimited Sharps containers at no additional charge. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in Exhibit 9, Company may additionally or alternatively arrange for door-to-door Collection of such containers through this program; however, Company shall continue to deliver Sharps containers to residents' door. "Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program, including promoting this program through its website and other outreach activities targeting seniors. This program will be provided at no additional charge to City or Customers beginning the first day of the start of service under this Agreement.

3.7 Containers

3.7.1 Carts

3.7.1.1 Residential Cart Distribution

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, Customers may request one Cart exchange at no charge each year. After one exchange per year, Customers may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

3.7.1.2 Removal of Existing Containers

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected. Company is responsible for all costs associated with Container collection and Disposal or Recycling. Company may retain any scrap value received from the Recycling of collected Containers.

3.7.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

Carts shall include a minimum of 30% recycled material and be recyclable.

3.7.1.4 Capacity

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

3.7.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

3.7.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;

- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

3.7.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color, matching current colors in distribution. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

3.7.1.8 Cart Labeling

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. The City's logo and, if requested by City, the City website shall appear on the Carts. Company's name and phone number shall be included on a label on the Cart lid (Company's name or logo shall not be visible on the side of the Cart).

3.7.1.9 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Carts. Company shall not hot stamp Company name on Carts.

TRASH, RECYCLING or **GREENWASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English, with graphics and instructions for proper disposal of HHW, and shall place labels on top of all Carts delivered to Customers.

3.7.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

3.7.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70

3.7.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;

- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

3.7.2.4 Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

3.7.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

3.7.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

3.7.3 Can Design and Performance Requirements

The Cans shall be manufactured by injection or rotational molding and meet the Can design and performance requirements as specified below. All Cans selected shall be subject to City approval.

3.7.3.1 Capacity

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

3.7.3.2 Can Handles

The Can handles will provide comfortable gripping area for carrying the Can.

3.7.3.3 Can Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

3.7.3.4 Can Colors

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

3.7.3.5 Identification Markings

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

3.7.3.6 Can Load Capacity

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

3.7.3.7 Can Durability

Cans shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.3.8 Chemical Resistant

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

3.7.3.9 Reparability or Replacement

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

3.7.4 Cart and Can Ownership and Maintenance Responsibilities

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The

Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

3.7.5 Bins and Compactors

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Company shall remove graffiti at no additional charge from any Container within twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

3.7.6 Rolloff Boxes

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.7.7 Option to Use Existing Carts

City has the sole option to permit Company to continue using Carts and Cans in place at the start of service under this Agreement for businesses and for Residential Customers receiving automated service under the previous Collection agreement. Residents in the Sand Section will receive new Carts when service in this area is automated at the start of service under this Agreement. City will notify Company upon award of this Agreement whether Company may continue to use the Carts and Cans already in distribution, subject to all on-going maintenance and replacement requirements under this Agreement. Exhibit 3-1 includes alternative Residential Cart rates to be applied if this option is permitted. All other rates will remain the same.

3.8 Diversion Requirements

3.8.1 Hauler Diversion Requirements

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation of the waste Collected by Company under this Agreement during each year of this Agreement is as follows:

<u>Calendar Year</u>	<u>Diversion Rate</u>
Remainder of 2011	50%
2012	50%
2013	51%
2014	52%
2015	53%
2016	54%
2017	55%
2018, full or partial year as applicable	55%
2019, full or partial year, if applicable	55%

Diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to CalRecycle). Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants the City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

3.8.2 City-wide Diversion Rate

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the City under this section that are not otherwise required to be implemented under this Agreement will be implemented in accordance with Section 2.10, under which Company may be entitled to an adjustment in compensation.

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 P.M and 7:30 A.M. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. Company shall adjust the early morning start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven day per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven day per week customers.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

3.9.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) years old. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG) at the start of service under this Agreement. Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the Company in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-Off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its 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) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's

specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.

- 5) The Company 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. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether

or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

- 4) Company shall equip all route vehicles with a GPS tracking system and enable the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

F. City Inspection Per Code. The 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 applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, 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 Manager, which decision shall be final.

3.9.3 Litter Abatement

A. Minimization of Spills. The Company 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 are spilled during

Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company 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 the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

3.9.4 Personnel

The Company 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company'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.

The Company 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. The Company 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company 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.

3.9.5 Identification Required

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

3.9.6 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

3.9.8 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

3.9.10 Waste Watch Program

Company drivers shall be trained to report unusual or suspicious situations that the drivers may see on route to the appropriate emergency responder.

3.10 Transportation, Disposal and Processing

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Site shall be the El Sobrante Landfill [via Company's Carson Transfer Station] and the approved waste-to-energy facility shall be the Southeast Resource Recovery Facility ("SERRF"). The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. In the event that City selects a Disposal Site or other Facility, the City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a change in tip fee or transportation costs.

If City directs Company to a facility other than a Solid Waste Facility selected or owned by Company, and use of this Facility adversely affects the ability of the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the City and Company shall meet and confer and mutually agree on revised obligations under Sections 3.8 and 8.3

3.11 Status of Disposal Site

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

3.12 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 Manhattan Beach Solid Waste. Company may request permission from the City for an exception on a case-by-case basis.

3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in the City. The annual route audit information shall include, at 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);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Whether each individual address is Commercial or Multi-Family;
- Number of Residential Dwelling units at each Multi-Family account;
- Service Level per Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted

to the Public Works Director and one to the City's billing manager. This summary shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total (Residential Cart, Multi-Family Bin, and Commercial);
- Types of billing and service exceptions observed;
- Number of billing and service exceptions by type;
- Total monthly billing, pre-audit;
- Total monthly billing, post-audit (subsequent to corrections of identified exceptions; and,
- Percentage of billing and service exceptions:
 - Percentage of the number of accounts with errors to the total number of accounts served;
 - Percentage of the "net" change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
 - Percentage of the "absolute" change in net monthly billing as a result of the audit to the total "pre-audit" monthly billing.

The report shall include a description of the procedures followed to complete the annual 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. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company's plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

3.14 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made,

through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company 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. The Company 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 the City. In addition to other required notifications, if the Company observes any substances that 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, the Company will immediately notify the Public Works Director or the Public Works Director’s designee.

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

3.15 Hazardous Waste Management Component

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

3.16 Disposal and Facility Capacity Guarantee

Company guarantees capacity for all Solid Waste Collected under this Agreement for the Agreement term at Company’s following Facilities: WM Carson Transfer Station, WM South Gate Transfer Station, Sun Valley Recycling Park (Green Waste), Downtown Diversion (C&D); at one or more of the following landfills as needed: El Sobrante Landfill Lancaster Landfill, Antelope Valley Landfill, and Simi Valley Landfill; and at Agromin (Green Waste). After Company’s Reclaimable Anaerobic Composter is completed, Company guarantees capacity for the pilot, and potential ongoing, Food Waste programs (Company would use third party facilities until completed).

ARTICLE 4
OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services in subsections A and B below.

A. Compost Bin Co-Pay. The Residential Customers' co-pay for compost bins shall be billed by the Company.

B. Rolloff Box and Temporary Bin Services. In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

4.1.2 City Billing

City shall perform all billing under this contract, other than Rolloff Box service, temporary Bin service, and compost bin co-pays. City reserves the right to direct Company at any time during the Agreement Term to charge Customers for periodic charges such as Bulky Waste pickups, Cart overage pickups, and Bin Container Overage Fees.

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of the City billing Customers. Payment will be based on City's records of services rendered and will be

subject to subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see 4.1.4 below).

4.1.4 Company Responsible for Service Level Accuracy

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt. Failure to notify the City in writing within 45 days shall confirm the Company's approval and acceptance of the payment amount.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

4.1.5 Review of Billings

The Company shall review Billings to Customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of Company Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.6 Suspension of Service Due to Non-Payment

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time

periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.7 Late Fees

Company may assess interest at a rate of 1.5% per month on outstanding balances for services Billed by Company beginning 60 days after invoice is sent. Company may charge insufficient funds fees of no more than \$35.00 per returned check. This section is not applicable to City-billed services, as City pays Company based upon Billings, not receipts.

4.1.8 Franchise Fee

A. Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes Billing of permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

B. Time and Method of Payment

Company shall remit the Franchise Fee payments on or before the thirtieth (30th) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30th) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs),

and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

4.2 Customer Service

4.2.1 Office Hours

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and number of representatives shall be adequate to handle the volume of calls typically experienced on the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

4.2.3 Complaint Documentation

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

4.2.4 Resolution of Customer Complaints

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

4.2.5 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints and assist with waste reduction programs. City shall have the right to approve the Company's choice for a liaison.

Government Liaison shall be the community relations liaison for Manhattan Beach business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his\her physical presence when

requested or appropriate at schools, businesses and business organizations, community events, Environmental Task Force meetings, City Council meetings and workshops, et al.

4.2.6 Service Liaison

Company shall designate in writing a field supervisor (i.e. route manager) as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints, and strategize with City on an on-going basis regarding more efficient Collection practices. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

4.2.7 Customer Service Liaison

Company shall designate a customer service representative to which the City can direct customers that contact the City with Solid Waste service questions. Customers Service Liaison will take responsibility for completing and closing out work orders within the City's designated work order system.

4.2.8 School Outreach Liaison

Company shall designate a School Outreach Liaison to oversee and coordinate all waste reduction activities under Section 4.3.8 below.

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Zero Waste Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to significantly exceed AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods

acceptable to the City. Any outreach material utilizing paper, provided and distributed by the Company, shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall assist the City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to the City. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

- **Initial Cart Selection Mailing** – Company shall prepare and distribute the mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** – At least 30 days prior to August 1, 2011, Company will prepare and mail, using City-provided labels, an initial mailing to Residential and Commercial Customers explaining the transition from the existing programs to the new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information. For Residential Cart Customers, this mailing will be in addition to the initial mailing requesting Cart Customers to select Cart sizes and numbers.
- **Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an "e-book" or "e-magazine" format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.

- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract is in effect, using City-provided mailing labels.
- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City’s request and with City’s review and approval of the materials. Notices will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners’ associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the Company shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material.

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Zero Waste Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Zero Waste programs.

4.3.5 Use of "Manhattan Beach Recycles" Program Name

The program name "Manhattan Beach Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. City confers a revocable license to Company to use "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

Company shall provide in-unit Recycling Containers to each Multi-Family Bin Customer Dwelling Unit upon request of individual Dwelling Unit, property owner or manager. In-unit Containers shall be hot stamped or labeled with items that may be placed in the Recycling Container, and shall not carry Company logo and shall become the property of the City upon distribution. City logo may be used. Company will provide all property managers and Residents with Bin service with Recycling program guidelines, posters to be placed in laundry rooms, refuse/recyclable container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin Customer service. Company shall contact each Multi-Family Customer building owner or property manager by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the recyclables containers.

Company shall prepare and mail a brochure with recycled content and labeled "Made from Recycled Paper" at least once per year to each Multi-Family Dwelling unit that does not individually receive semi-annual and quarterly notices under Section 4.3.2; brochure shall describe all Solid Waste programs and holiday schedules as they apply to Multi-Family Cart Customers and to Residential Bin Customers.

Company commits a minimum of 400 hours of Company staff, or third-party contractor, time per year towards meeting Multi-Family outreach efforts as described in this section.

4.3.7 Commercial Outreach Recognition Program

Company commits a minimum of 600 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

Green Business Certification Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with an award to be mutually agreed upon by City and Company.

Zero Waste Green Works - Promoting Recycling at the Work Place

Company will provide businesses with recycled-content prizes such as reusable water bottles, reusable grocery bags, and/or other incentives for managers to provide to employees who contribute to the business’ Zero Waste green program.

Company will provide business managers with promotional information, flyers and instructional posters made from recycled paper and labeled “Made from Recycled Paper” to implement a comprehensive waste reduction and recycling program, including information on what cannot be placed in the recycling container (i.e.: HHW).

Company shall provide initial and on-going consultation and support to businesses who request it to ensure long term success of their business' waste reduction and recycling program.

4.3.8 School Zero Waste Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District and private schools, to promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative recycling containers to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;
- Conduct a minimum of one assembly promoting recycling at each school in the City each year;
- Education and training on proper recycling and waste reduction techniques to students and teachers and web-based resources for the district and schools' websites;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations, including composting classes, aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program;
- Conduct annual CRV fundraising campaigns;
- Proper signage for all school sites;

- Provide teachers with sample lesson plans and activity sheets made from recycled paper and labeled “Made from Recycled Paper” on relevant topics on an as requested basis; and,
- Contact each school at least once per semester to offer all services included in this section. City or school may request that more frequent contacts be made. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at schools, Company shall make an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management, janitorial staff, faculty and student volunteers to ensure that improved recycling and waste reduction techniques have been implemented.

Company commits a minimum of 500 hours of Company staff, or third-party contractor, time per year towards meeting School outreach efforts as described in this section. Time allocated to contacting schools to offer programs shall not be counted towards minimum.

Re-Use Lunch Kits – Company shall provide reusable lunch kits to each first grader in the Manhattan Beach Unified School District each year. Company will purchase these kits from a local company “Go Green Lunch Box” to support the local economy. These kits shall be provided at no additional cost.

4.3.9 Manhattan Beach Education Foundation

Company will contribution \$25,000 per year to Manhattan Beach Education Foundation (“MBEF”).

4.3.10 Reallocation of Hours

Company may request approval from City to reallocate the minimum guaranteed hours among the three sectors, Multi-Family, Commercial and School outreach. Upon advance written approval from City, approval over which City has sole discretion, Company may reallocate hours.

4.3.11 Recycling Facility Tours

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

4.3.12 Recycling and Take-Back Programs

Synthetic Carpet Pilot Program – Company will offer a one-year pilot program whereby Company will Collect and Recycle synthetic carpet, up to 600 square feet, cut and rolled for Collection by one driver from Customer’s Residential or Commercial premises. In addition, City has the option to request that Company provide a locked storage Container at a City facility for Customers to drop-off synthetic carpet. This program will be provided at no additional cost to City or ratepayer. After completion of the one-year pilot program, Company and City will discuss the program results and the cost if the City wanted to continue the program.

Donation Box – If requested by City, Company will place a taper-free donation box at a City facility for Customers to drop off donation items to be determined by City and Company at the time of project implementation. Company will Collect donations for redistribution. City staff would be responsible for accepting donations and calling for Company pickup if City requests this service. Company will track and report tonnage diverted and Disposed through this program.

Recycling Rewards Clean Cart Challenge – Three months each year, Company will randomly assess Single and Multi-Family Recycling Carts and Bins and provide a reward to Customers whose Recycling Containers have less than 5% contamination. Company will promote this program on its website, in community newspaper ads and other media outreach throughout the term of the Agreement. This program will be provided at no additional cost to City or ratepayers. Company and City will review the

performance of this program in increasing diversion on an as-needed basis, and agree to negotiate with respect to changes in the program or substitution of new programs to increase diversion.

Manhattan Beach Middle Management Program (“MBMMP”) – Company will support MBMMP through services such as beach cleanups, composting classes, and supply donations of gloves, bags and give-a-way items.

LA Shares Data Base – Company will work with LA Shares and develop a website for the redistribution of donated materials to non-profits and schools. This website will be similar to the LA Shares website in use for the City of Los Angeles. Initial program implementation will be for one year. Company and City will review the performance of this program at the end the initial one-year period, and agree to negotiate with respect to continuation of the program, changes in the program, or substitution of new programs to increase diversion.

At no additional cost, Company will promote and conduct:

- An annual Residential curbside Collection program for reusable items including textiles/clothes.
- An annual shred day, whereby Residents and businesses can deliver paper for confidential shredding.
- Five community shoe donation collection events, and shoe redistribution.
- An annual Halloween costume donation/exchange event.

4.3.13 Construction Waste Disposal Assistance

Company will provide consultations to contractors requesting Construction and Demolition Waste services on earning points towards LEED certification.

4.4 Waste Generation/Characterization Studies

Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939.

Company 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 (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Company 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.

4.5 Grant Writing

Company will assist the City with grants by actively seeking, writing, and managing grants, and reporting grant funds at no additional cost.

ARTICLE 5

COMPANY COMPENSATION AND RATES

5.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

5.2 Initial Rates

The Company Compensation from the start of service under this Agreement through June 30, 2012 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2012, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline. If any rates would decline based upon Section 5.4 calculations and a rate decrease is not implemented, the subsequent rate adjustment shall be based upon the average changes in indices since previous rate adjustment instead of the average change over the prior year.

The rate adjustments shall apply to the Company Compensation rates included in Exhibit 3. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

5.4 Method of Adjustments

5.4.1 General

For Rate Years beginning July 1, 2012, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

5.4.2 Cost Components for Rate Adjustment Indices

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor (1)</u>
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	30%	48%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	6%	13%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	17%	28%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste	40%	N/A	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average or 5%, whichever is lower
Transformation	1%	N/A	Actual change in the per ton gate rate at the waste-to-energy facility approved for use
All Other	6%	11%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

5.4.3 Rate Adjustment Steps

Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 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.

Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

5.5 Extraordinary Adjustments

Company may request an adjustment to maximum rates at reasonable times other than that allowed under Section 5.3 and 5.4 of this Agreement in the event of extraordinary changes in the cost of providing service under this Agreement. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of the rate based on an increase or decrease in a direct per ton surcharge assessed at the disposal site or transfer

station by Federal, State or local regulatory agencies after the effective date of this Agreement, to the extent the percentage change in these adjustments exceed the cumulative percentage change in the Disposal component adjustments granted under Section 5.3.

For each request for an adjustment to the maximum rates that Company may charge Customers brought pursuant to this section, Company 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 Company in preparing the estimate. Company 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 Company's annual financial statements in connection with the City's review of Company's rate adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

City shall review Company's request and, in City's sole judgment and absolute 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 Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.
- c) Results of the most recent route audit as described in Section 3.13.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results,

feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

6.2 Performance Satisfaction Survey

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1. City shall notify Company of its desire for such a survey at least 90 days in advance of the Solid Waste Services and Performance Review Meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Company. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Company to send out separate Single Family and Multiple-Family/Commercial surveys. Company shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may choose to write or re-write the survey. City may require that Company have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

The Company 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, the Company agrees to conduct data Collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. 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 the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

7.2.3 Solid Waste Service Records

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for limited services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick ups;
- f) Number of Refuse, Recycling, and Green Waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

7.2.4 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

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 Biennial Audit

Company shall fund biennial audits as described below. 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. The first audit will be based on the Company's reports and records for Fiscal Year 2012 and may be conducted as soon as relevant data, such as tonnage, is available. Audits will be performed every other year thereafter (the biennial audit). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

7.2.7 Payments and Refunds

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

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 efficiency of operations;
- b) Evaluate past and expected progress towards significantly exceeding AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under

penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

Public Works Director (or designated representative)
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.

- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.
- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.
- j) Report of contacts, visits and results of Multi-Family Customer visits in accordance with Section 4.3.6.

7.3.3 Quarterly Reports

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling programs with Company, and their service levels.

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.

- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated companies, and of other entities that may perform services under this Agreement, as the City may request.
- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
- f) Number of routes and route hours per day by type of service.

7.3.5 Financial Report

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing the Company'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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

7.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

7.5 Right to Inspect Records

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, 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) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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 or active negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement. Company’s indemnification of the City is subject to all of the following restrictions:

- a. The Company’s obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et. seq.* of the Public Resources Code.
- b. No payment required under the company’s obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company’s breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company’s breach or non-compliance resulted from City’s action

or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

8.4 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a) The City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
 - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
 - d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. The Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

8.5 Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to

cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the 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, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.7 Performance Bond Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 3.8, will not be substantiated until after the final service date. Therefore, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (18) months after the end of the Term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

8.8 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

8.9 Pavement Damage

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by Company's, or Company's subcontractor's, vehicles or employees. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

9.5 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company 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 Company is entered.
- E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand,

with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company 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.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company 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.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

10.2 Criminal Activity of Company

Should the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Company has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty and any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain. If the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. The City finds, and the Company 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 the City as a result of a breach by the Company of its 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) the services provided under 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 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 Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the 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.

Company _____ City _____
Initial Here _____ Initial Here _____

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

1. **Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five (5) such failures annually: \$ 50.00
- c) For each failure to correct a missed pickup within the timing allotted for correction per Section 4.2.2, and for each additional business day in which the Collection is not made up, which exceeds ten (10) such failures annually: \$50.00/day
- d) 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: \$150.00

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually: \$150.00

- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) such occurrences annually:

\$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually:

\$150.00
- f) For each failure to deliver a Rolloff Box or temporary Bin within 48 hours of a Customer's request:

\$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed:

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:

\$250.00
- c) For each failure to notify City within one (1) hour from the time Company has remedied a complaint forwarded by City.

\$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers:

\$150.00
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company.

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversions Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the diversion requirement each year per Section 3.8.1, beginning with the first full calendar year 2012, and including any partial calendar year at the end of the term: \$25 per ton

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 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 11.8: \$1,000/day

The 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.

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

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes,

other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Company shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify Public Works Director sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Company shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Company is not excused from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 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.

Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a “reverse 911” contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company 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, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

10.6 Assurance of Performance

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

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

11.2 Compliance with Law

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

11.3 Governing Law

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

11.4 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.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) Company shall pay City its reasonable expenses for attorney's and/or consultant'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 Company 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.
- b) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided;

- 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 Company's operations.

- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the 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 sale of operations conducted by the Company 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 the City with a complete list of 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties 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.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Company shall be responsible for coordinating transfer immediately after Company's final pickups, so as not to disrupt service. Company 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. Company shall provide means of access to the new service provider at least one full Working 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.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that customers neither need to find storage for two sets of containers nor go without a container for an inconvenient length of time.

11.9 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.

11.10 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 that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 The Company's Investigation

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

11.12 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

11.13 Notice

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

If to the City: City Manager
 City of Manhattan Beach
 1400 Highland Avenue

Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

And to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to the Company: USA Waste of California, Inc.
1920 East 213th Street
Long Beach, CA 90810
Attn: District Manager

Copy to: USA Waste of California, Inc.
Area General Counsel
7025 Scottsdale Road, Suite 200
Scottsdale, AZ 85253

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

11.14 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

11.15 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of 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 under Section 10 of this Agreement.

11.16 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. If changes to the municipal code of the City made after the execution of this Agreement are in conflict with this Agreement, the terms and conditions set forth in this Agreement shall prevail.

11.17 Privacy

The Company 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 the Company 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 so long as City maintains reports or records with Customer

identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.18 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

11.19 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

11.20 Guarantee of Company's Performance

Pursuant to a guarantee in substantially the form attached as Exhibit 5, Waste Management Holdings, Inc., a Delaware corporation which owns all of the issued and outstanding common stock of USA Waste of California, Inc., has agreed to guarantee the Company's performance of this Agreement. The Guarantee is being provided concurrently with the Company's execution of this Agreement.

11.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

12.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

12.4 Interpretation

This Agreement, including the exhibits 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.

12.5 Agreement

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

12.6 Severability

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

12.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH

("City")

ATTEST: _____
CITY CLERK

By: _____
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

USA Waste of California, Inc.
COMPANY NAME

By: Larry Metter

City Attorney

Name: Larry Metter

Title: Vice President

EXHIBIT 1
COMPANY PROPOSAL

EXHIBIT 2
PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 3
MAXIMUM INITIAL COMPANY COMPENSATION

Residential Monthly Rates (through July 30, 2012)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate			
	Standard Service - New Carts	Standard Service - Used Carts	Extra Refuse Cart	Backyard Service Surcharge (2)
96-gallon refuse ⁽¹⁾	\$ 17.11	\$ 16.25	\$ 8.00	\$ 7.00
64-gallon refuse ⁽¹⁾	\$ 13.11	\$ 12.25	\$ 6.00	\$ 7.00
35-gallon refuse ⁽¹⁾	\$ 9.11	\$ 8.25	\$ 4.00	\$ 7.00

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building		
	Standard Service - New Carts	Standard Service - Used Carts	Backyard Service Surcharge (2)
2 Dwelling Units	\$ 23.69	\$ 22.17	\$ 14.00
3 Dwelling Units	\$ 35.54	\$ 33.26	\$ 21.00
4 Dwelling Units	\$ 47.38	\$ 44.34	\$ 28.00
5 Dwelling Units	\$ 59.23	\$ 55.43	\$ 35.00
6 Dwelling Units	\$ 71.07	\$ 66.51	\$ 42.00
7 Dwelling Units	\$ 82.92	\$ 77.60	\$ 49.00
8 Dwelling Units	\$ 94.76	\$ 88.68	\$ 56.00
9 Dwelling Units	\$ 106.61	\$ 99.77	\$ 63.00

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

Note: Additional refuse carts for customers with 2 to 9 units, and additional recycling and green waste carts for all residential cart customers shall be provided at no additional charge.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through July 30, 2012)
Commercial Bin Rates

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 13.86	\$ 27.72	\$ 41.58	\$ 55.44	\$ 69.30	\$ 83.16	\$ 97.02	\$ 3.50
32-Gallon Cart	\$ 13.86	\$ 27.72	\$ 41.58	\$ 55.44	\$ 69.30	\$ 83.16	\$ 97.02	\$ 3.50
64-Gallon Cart	\$ 27.72	\$ 55.44	\$ 83.16	\$ 110.88	\$ 138.60	\$ 166.32	\$ 194.04	\$ 7.00
96-Gallon Cart	\$ 41.58	\$ 83.16	\$ 124.74	\$ 166.32	\$ 207.90	\$ 249.48	\$ 291.06	\$ 10.00
2 Cubic Yard	\$ 67.68	\$ 105.77	\$ 141.00	\$ 176.27	\$ 211.52	\$ 282.02	\$ 352.51	\$ 19.35
3 Cubic Yard	\$ 86.93	\$ 134.18	\$ 178.89	\$ 223.62	\$ 268.34	\$ 357.77	\$ 447.22	\$ 29.00
4 Cubic Yard	\$ 104.15	\$ 162.78	\$ 217.03	\$ 271.29	\$ 325.54	\$ 434.07	\$ 542.58	\$ 38.69
6 Cubic Yard	\$ 133.89	\$ 209.26	\$ 279.02	\$ 348.78	\$ 418.53	\$ 558.05	\$ 697.55	\$ 58.01
2 Cubic Yard Compactor	\$ 115.55	\$ 180.53	\$ 240.70	\$ 304.07	\$ 361.07	\$ 481.47	\$ 601.95	\$ 33.04
3 Cubic Yard Compactor	\$ 147.35	\$ 230.30	\$ 309.22	\$ 383.74	\$ 460.46	\$ 613.98	\$ 767.50	\$ 49.15
4 Cubic Yard Compactor	\$ 179.38	\$ 280.29	\$ 373.73	\$ 467.11	\$ 560.60	\$ 747.42	\$ 934.40	\$ 66.64
6 Cubic Yard Compactor	\$ 231.43	\$ 361.68	\$ 482.27	\$ 602.80	\$ 723.36	\$ 964.49	\$ 1,205.62	\$ 100.27
2 Cubic Yard Split Bin (1)	\$ 64.18	\$ 102.69	\$ 136.89	\$ 171.11	\$ 205.34	\$ 273.10	\$ 341.37	\$ 19.35
3 Cubic Yard Split Bin (1)	\$ 65.93	\$ 104.17	\$ 138.86	\$ 173.58	\$ 208.29	\$ 277.03	\$ 346.29	\$ 29.00
4 Cubic Yard Split Bin (1)	\$ 67.68	\$ 105.77	\$ 141.00	\$ 176.27	\$ 211.52	\$ 282.02	\$ 352.51	\$ 38.69

(1) Assumes half refuse, have recyclables.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through July 30, 2012, new or used cart option)

Rolloff Box Rates

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	\$ 154.51 per pull
Compactor Box, Any Size	\$ 208.59 per pull
Rolloff Per Ton Charges	
Refuse Disposal	\$ 52.96 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 50.12 per ton
Additional Container Rental - (for boxes emptied less than 3x/ month)	
Standard Box, Any Size	\$ 27.60 per week
Compactor Box, Any Size	\$ 27.60 per week

Optional C&D Rates

Rate Per Pull, Excluding Disposal	
25-40 cubic yard roll-off box	\$ 154.51 per pull
Low Boy (10 cubic yard) roll-off box	\$ 154.51 per pull
Rolloff Per Ton Charges	
Mixed Loads of C&D Debris	\$ 35.02 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
Temporary Bin Service	
First Dump, including delivery and disposal	\$ 81.21 per dump
Additional dumps, including disposal	\$ 27.06 per dump

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through July 30, 2012, new or used cart option)

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 72.28	\$ 81.21	\$ 90.14	\$ 108.01
Each Additional Dump	\$ 18.13	\$ 27.06	\$ 35.99	\$ 54.12
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)

EXHIBIT 4A

EXAMPLE CART & BIN RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices					
Row	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/Column A) -1)
1	Labor	(1)	107.30	109.15	1.7%
2	Fuel	(2)	344.0	159.1	-53.8%
3	Equipment	(3)	118.9	124.3	4.5%
4	Disposal	(5)	215.8	219.2	1.6%
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%
6	All Other	(4)	215.8	219.2	1.6%

Step Two: Determine components					
Row	Adjustment Factor	Index	D Cost Factor Category Weighted as a % of Component Total (7)	E Percent Change In Index (from Column C)	F Total Weighted Change (Columns D x E)
7	Labor	(1)	30.0%	1.7%	0.5%
8	Fuel	(2)	6.0%	-53.8%	-3.2%
9	Equipment	(3)	17.0%	4.5%	0.8%
10	Disposal	(5)	40.0%	1.6%	0.6%
11	Transformation	(6)	1.0%	14.6%	0.1%
12	All Other	(4)	6.0%	1.6%	0.1%
13	Total		100.0%		-1.1%

Step Three: Apply percentage change to rates						
Row	Rate Category		G Current Contractor Rate (8)	H Total Weighted Percent Change (from Column F)	I Rate Increase or Decrease (Column G x Column H)	J Adjusted Rate (Column G + Column I)
14	64-gallon Cart - new carts	\$	13.11	-1.1%	\$ (0.14)	\$ 12.97
15	2 unit Service	\$	23.69	-1.1%	\$ (0.26)	\$ 23.43
16	1 unit backyard surcharge	\$	14.00	-1.1%	\$ (0.15)	\$ 13.85
17	2 unit backyard surcharge	\$	21.00	-1.1%	\$ (0.23)	\$ 20.77
18	Extra bulky item	\$	21.60	-1.1%	\$ (0.24)	\$ 21.36
19	Special Pickup/Cart Ov.	\$	5.00	-1.1%	\$ (0.06)	\$ 4.94
20	Commercial Can	\$	13.86	-1.1%	\$ (0.15)	\$ 13.71
21	3 yd bin, 1x week	\$	86.93	-1.1%	\$ (0.96)	\$ 85.97
22	3 yd comp., 1x week	\$	147.35	-1.1%	\$ (1.62)	\$ 145.73
23	3 yd bin, extra pickup	\$	29.00	-1.1%	\$ (0.32)	\$ 28.68

Step Four: Re-weight cost components							
Row	Adjustment Factor	Index	K Cost Component (Column D)	L Percent Change in Index (Column E)	M Change in Cost Component Weightings (Column K x Column L)	N Adjusted Cost Component Weightings (Column K + Column M)	O Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	30.0%	1.7%	0.5%	30.5%	30.8%
25	Fuel	(2)	6.0%	-53.8%	-3.2%	2.8%	2.8%
27	Equipment	(3)	17.0%	4.5%	0.8%	17.8%	18.0%
28	Disposal	(5)	40.0%	1.6%	0.6%	40.6%	41.1%
29	Transformation	(6)	1.0%	14.6%	0.1%	1.1%	1.1%
30	All Other	(4)	6.0%	1.6%	0.1%	6.1%	6.2%
31	Total		100.0%			98.9%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.
 (2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*
 (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.*
 (4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*
 (5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change., capped at 5% annually.*
 (6) Gate rate at transformation facility (if applicable)
 (7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.
 (8) Example rates listed. Adjustment applies to all applicable rate categories.

* See Exhibit 4C.

EXHIBIT 4B

EXAMPLE ROLL-OFF BOX 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	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/Ton	(5)	215.8	219.2	1.6%

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 (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	48.0%	1.7%	0.8%
9	Fuel	(2)	13.0%	-53.8%	-7.0%
10	Equipment	(3)	28.0%	4.5%	1.3%
11	All Other	(4)	11.0%	1.6%	0.2%
12	Service Component Total		100.0%	n/a	-4.7%
13	Refuse/Ton	(5)	100.0%	1.6%	1.6%

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 H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll off Box Pull Rate	\$ 154.51	-4.7%	\$ (7.26)	\$ 147.25
15	Compactor Roll off Box Pull Rate	\$ 208.59	-4.7%	\$ (9.80)	\$ 198.79
16	Refuse/Ton	(5) \$ 52.96	1.6%	\$ 0.85	\$ 53.81

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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	48.0%	1.7%	0.8%	48.8%	51.2%
18	Fuel	(2)	13.0%	-53.8%	-7.0%	6.0%	6.3%
19	Equipment	(3)	28.0%	4.5%	1.3%	29.3%	30.7%
20	All Other	(4)	11.0%	1.6%	0.2%	11.2%	11.8%
21	Total		100.0%			95.3%	100.0%

- (1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.*
 (2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*
 (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.*
 (4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*
 (5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change., capped at 5% annually.*
 (6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

* See Exhibit 4C.

EXHIBIT 4C

EXAMPLE CALCULATION FOR AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal” and “all other” cost components in Column C.

Consumer Price Index - All Urban Consumers, U.S. City Average
All items less food and energy, CUUR0000SAOL1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235

Average Annual Change: **1.7%**

EXHIBIT 5

CORPORATE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the ____ day of ____, 2011.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. USA Waste of California, Inc., hereinafter ("Owner") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by Waste Management Holdings, Inc., (Guarantor).

B. Owner and the City of Manhattan Beach ("the City") have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, or cause to perform them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. Guarantor's Obligations Are Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. No Waivers. No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following Person as its agent for service of process in California:

CT Corporation System
818 W. 7th Street
Los Angeles, CA 90017

With a copy by certified mail to:

Corporate Secretary
Waste Management Holdings, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City:

City Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

with a copy to the City Counsel at the same address.

To the Guarantor:

Corporate Secretary
Waste Management Holdings, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002

By: _____
(title)

By: _____
(title)

EXHIBIT 6

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, _____, a _____ corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2010.

a _____ Corporation

SURETY

By: _____
(PRINCIPAL)

By: _____
(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 7

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 the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company 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:

EXHIBIT 8

CITY SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

EXHIBIT 9

OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.40 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.40 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2012.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);

- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and
- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist's paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with a program description, the start date, materials to be collected, and instructions on how to call in for a pickup. Company shall be required to update the City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of the City's "e-book") in public education mailers required under Section 4.3.2.

B. Additional Processing of Bin Route Refuse

City may request to have Company process sufficient Refuse that is Collected on Bin routes to recover a minimum of 3,549 tons per calendar year from this program, including the 1,365 tons required to be recovered under Section 3.5 and an additional 2,184 tons to be recovered. These annual tonnage requirements shall be pro-rated if program begins or ends partially through a calendar year. City may instruct Company to begin the additional processing upon 90 days notice, with a corresponding Company Compensation increase of 16% to be applied to monthly Bin Collection service rates and extra bin pickup rates and temporary Bin service, but excluding ancillary service rates such as Bin rental or locking Bin charges.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not include any business instruction and therefore does not need to be placed in outreach materials.

C. Exclusive Construction and Demolition Debris Collection

City reserves the right to require Company to exclusively Collect all Construction and Demolition Waste generated in the City at rates not to exceed the rates included in Exhibit 3 at any time during the Agreement Term. Company will be required to divert a minimum of 70% of all Construction and Demolition Waste Collected from landfilling under this option. Construction and Demolition Wastes does not apply towards diversion requirements under Section 3.8.1. Such maximum rates shall be adjusted in accordance with Article 6. This does not preclude City from continuing to permit open competition, to select another exclusive hauler for Construction and Demolition Waste, to competitively procure an exclusive Construction and Demolition Waste collector, or to negotiate with Company for Construction and Demolition Waste Collection.

EXHIBIT 10

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

EXHIBIT 11

COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”




Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Cohen and Members of the City Council

THROUGH: Geoff Dolan, City Manager 

FROM: Jim Arndt, Public Works Director
Anna Luke, Management Analyst

DATE: May 5, 2009

SUBJECT: Environmental Task Force Solid Waste and Recycling Subcommittee (SWRS) recommendations for the next solid waste contract and discussion of the expiring contract.

- A) Discuss and provide direction on the ETF Solid Waste and Recycling Subcommittee (SWRS) recommendations.
- B) Approve a Request for Proposal Process for a New Solid Waste Contract.
- C) Authorize the City Manager to negotiate a Solid Waste Professional Services contract with Hilton, Farnkopf & Hobson, LLC.
- D) Approve the letter of notice so the City has the option to franchise a Construction and Demolition hauler in five years.

RECOMMENDATION SUMMARY:

- A) Staff recommends that City Council discuss and affirm which SWRS recommendations that Council would like to include in the draft of the next solid waste contract.
- B) Staff recommends that City Council go out to bid for the City's next solid waste contract, that staff be directed to develop an Request for Proposal (RFP) and return to City Council for approval.
- C) Staff recommends that City Council authorize the City Manager to negotiate a solid waste professional services contract with Hilton, Farnkopf & Hobson, LLC.
- D) Staff recommends that City Council approve the letter of notice so that the City has the option to franchise a Construction and Demolition hauler in five years.

A) SWRS Recommendations

RECOMMENDATION:

Staff recommends that City Council discuss and affirm which SWRS recommendations that Council would like to include in the draft of the next solid waste contract.

FISCAL IMPLICATION:

Council is selecting a "menu" of program changes/additions for consideration in the next solid waste contract. Based on the SWRS recommendation, Council should select what program additions should be in the draft of the new contract. Staff will include Council's chosen program additions in the new contract for proposals submitted by interested haulers. Because of the private nature of pricing in a competitive market, Staff is not able to provide cost estimates for each program recommended.

BACKGROUND:

Solid Waste in California

In 1989, the State approved AB939 which required each city in California to divert 50% of its waste from the landfill. Cities across the state evaluated programs and practices, and made changes to meet the diversion rate. The City of Manhattan Beach is in compliance with AB939, with a diversion rate above 50%. With each new solid waste contract, an evaluation of programs and practices is necessary to formulate possible changes as the City works toward an increased diversion of waste from the landfill. With the expiration of the City's current solid waste contract on October 31, 2010, this stage has begun. The addition of the Environmental Task Force Solid Waste and Recycling Subcommittee provided Staff with an insightful resident and commercial perspective as suggestions were discussed and formulated for the next contract.

Environmental Task Force (ETF)

In June, 2008 City Council decided to form a resident-based Environmental Task Force (ETF) to study environmental issues of priority to the community. Staff solicited applications and on September 2, 2008 Council reviewed these applications and selected 14 residents to serve on the ETF. Council then appointed two representatives to the ETF, Mayor Portia Cohen, and Mayor Pro Tempore Mitch Ward. The remaining positions were appointed by the MB Unified School District, including Amy Howorth School Board Member, and two student representatives.

The 19-member ETF had its first meeting on October 15, 2008, and divided into four subcommittees to tackle priority environmental issues identified by City Council: the Development of a Climate Action Plan; Water Conservation and Storm Water Management Issues; Waste Reduction and Recycling; and Sustainable ("Green") Design. Since this first meeting the ETF subcommittees have made significant progress on the goals and tasks identified so far.

Each group has made status report presentations to the entire ETF, and has begun presenting their recommendations on environmental solutions to the City's challenges for ETF approval. Once the ETF has approved a set of recommendations, they are presented to City Council for review

and approval. Council can then provide Staff with direction on how to carry out the recommendations.

Solid Waste and Recycling Subcommittee (SWRS)

The Solid Waste and Recycling Subcommittee (SWRS) is comprised of three members with varying backgrounds and a passion for waste reduction. As representatives of the residential and commercial sectors, the SWRS has provided a community point of view by offering helpful observations and insights regarding the solid waste programs in the City. City Staff has provided support to the subcommittee as well.

The SWRS was directed to focus its initial efforts on evaluating the programs in the current solid waste contract and to provide recommendations to City Council on improvements and/or additions for the next solid waste contract. This issue was given priority due to the expiration of the current contract on October 31, 2010. Ample time is needed for preparation of a new contract and evaluation of proposals from interested haulers. Once the SWRS finishes Phase I of its term by presenting contract recommendations to Council, Phase II will consist of goals including, but not limited to, creating a zero waste policy, refreshing solid waste public outreach materials, considering a mandatory recycling ordinance and pursuing a Styrofoam ban.

The SWRS' recommendations for the next solid waste contract introduce innovative programs that were not readily available in Southern California during the City's last contract such as food waste recycling and mobile household hazardous waste pick up. City staff has worked with the SWRS members to provide input and support, keeping in mind City protocols and operations. The Environmental Task Force approved the recommendations that are being presented for Council discussion and direction.

DISCUSSION:

The SWRS approached its task by first evaluating the following:

- What programs are successful?
- What programs are unsuccessful?
- What areas are holding the City back from increasing diversion and reducing the amount of landfill waste?
- What are the programs found in cities who are leading the way in waste reduction?
- What issues does Staff receive the most requests and complaints for?

After some research, the following comments and conclusions were made by the SWRS:

- Residential recycling is the City's most successful program. Residents have a good grasp of the general recycling program and what to place in the recycling container. Diversion rates are consistently over 50% in Residential areas.
- The commercial sector, which includes businesses, multi-family dwellings and public cans, is the greatest area of improvement. The commercial diversion rates are consistently below 20%. Multi-Family Dwellings and the business sector often face issues of contamination and lack of space for recycling containers. Although recycling bins and service are free to all commercial properties, the program is not succeeding in this sector.
- The Construction and Demolition (C & D) recycling program needs more accountability. The accountability of contractors to submit all landfill and recycling tickets is time

consuming. Because this process is based on the honor system, and there is not enough Staff to physically audit each construction site consistently for proper waste tonnages sent to landfill vs. recycling facilities, greater accountability and easier reporting needs to be established to take the C & D program to the next level.

- To take Residential recycling to the next level, the SWRS sees great value in an organics (i.e.: food waste recycling) program, tiered rate structure (i.e.: “Pay as You Throw”), convenient hazardous waste collection, and increased accountability of construction and demolition waste.
- Staff receives frequent requests regarding Sand Section service (i.e.: automated service, hauler-provided trash containers (that have wheels), as well as the above mentioned programs such as food waste recycling and more convenient hazardous waste disposal.

Although other innovative programs were considered (such as anaerobic digestion), programs that are not yet conveniently offered by haulers can be quite expensive, if available at all.

With the above conclusions, the SWRS began evaluating current contract programs and practices and formulated improvements and additions for the next solid waste contract. The items City Council selects will be placed in a new contract as part of a Request for Proposal for interested, qualified haulers.

The following four charts (Residential, Commercial, MBUSD Schools, and Additional Items) list all of the improvements and additions the SWRS is recommending for the next solid waste contract. Within the chart the topic is stated, a brief explanation of the current practice in Manhattan Beach, the SWRS recommendation for Council to approve, and noted benefits to approving the SWRS recommendation.

A few topics have more than one option listed for Council consideration as both options could work in Manhattan Beach (i.e.: HHW Option #1, HHW Option #2). It is not necessary to decide which option is best at this point. Council may approve *both* options to be included in the draft RFP with no consequence. The decision of which options to choose can be deferred until the first professional draft of the Request for Proposal (RFP) is brought before Council. Once the draft RFP is presented, City Council can make a final decision on which options to include in the formal RFP.

Residential Recommendations

<u>TOPIC</u>	<u>CURRENTLY WHAT'S DONE</u>	<u>RECOMMENDATION</u>	<u>BENEFITS TO CHANGE</u>
<i>Residential Pricing Structure Option #1</i>	<p>Flat rate for trash and resident receives unlimited number of cans serviced 1 time per week.</p> <p>Recycling and green waste bins and services are free.</p>	<p>Aggressive tiered rate structure for trash.</p> <p>Free recycling and green waste services.</p>	<p>Incentive for reducing waste through increasing recycling, green waste, and composting by increasing the unit cost of trash as more trash is thrown out.</p>
<i>Residential Pricing Structure Option #2</i>	<p>Flat rate for trash and resident receives unlimited number of cans serviced 1 time per week.</p> <p>Recycling and green waste bins and services are free.</p>	<p>Aggressive tiered rate structure for trash.</p> <p>First recycling container free. Moderate tiered rate structure for additional recycling containers.</p>	<p>Incentive for reducing overall materials from the waste stream, including recyclable materials.</p>
<i>Curbside Food Waste Recycling</i>	<p>City subsidizes the cost of worm and compost bins for residents to assist with food waste recycling.</p>	<p>Begin curbside food waste recycling program - food waste would go into green waste container</p>	<p>Larger waste stream out of the landfill. Consistent resident request to begin this program.</p>
<i>Automated Service for entire city</i>	<p>Sand Section has manual collection and rest of city has automated</p>	<p>Automate in all areas possible (current hauler found a couple alleys will have to be manual)</p>	<p>More efficient service, major reduction on physical impact of refuse employee</p>

<p><i>Wheeled Toters in Sand Section</i></p>	<p>Current hauler is contracted to distribute non-wheeled recycling containers to Sand Section</p>	<p>Hauler to provide wheeled toters to residents in Sand Section. If it's deemed at the City's discretion that a street is too steep for wheeled toters, non-wheeled containers will be provided by hauler.</p>	<p>Greater ease and convenience for resident to bring trash and recycling to the curb for collection. Major request from residents over the years of the current contract.</p>
<p><i>Hauler Provide All Toters in Sand Section</i></p>	<p>Sand Section residents must purchase their own trash containers</p>	<p>Hauler to provide all residents with toters, including Sand Section residents</p>	<p>Containers in Sand Section will be consistent with the rest of the City. Major request from residents over the years of the current contract.</p>
<p><i>Green Waste Toters in Sand Section (upon request)</i></p>	<p>Free, unlimited curbside green waste recycling for automated section</p>	<p>Offer green waste toters to Sand Section residents</p>	<p>Helps in waste diversion. Some Sand Section homes have courtyards and small gardens.</p>
<p><i>Household Hazardous Waste Option #1</i></p>	<p>Resident takes HHW to Hyperion or LA County Round Up</p>	<p>HHW mobile pickup at residents home once or twice per year - collection route</p>	<p>Proper disposal; convenience; resident does not have to transport toxic materials.</p>
<p><i>Household Hazardous Waste Option #2</i></p>	<p>Resident takes HHW to Hyperion or LA County Round Up</p>	<p>Appointment based mobile co-pay program. Service visits home by appointment only.</p>	<p>Proper disposal; convenience; resident can call any time they have items to dispose - ultimate convenience for proper disposal. Frequent resident request.</p>

Commercial Recommendations

<u>TOPIC</u>	<u>CURRENTLY WHAT'S DONE</u>	<u>RECOMMENDATION</u>	<u>BENEFITS TO CHANGE</u>
Aggressive Tiered Rate Structure Option #1	Rate by bin size & collection frequency, recycling is free	Aggressive tiered rate structure for trash and recycling is free.	Commercial diversion is low, this will increase recycling. Force businesses to implement recycling programs & train employees.
Aggressive Tiered Rate Structure Option #2	Rate by bin size & collection frequency, recycling is free	Aggressive tiered rate structure for trash. Trash is processed at a "dirty Material Recovery Facility." Recycling is free.	Most comprehensive program. Recyclables removed from trash at MRF, provides additional collection of recyclables. Increased diversion in difficult sectors like Downtown and Multi-Family
Commercial Food Waste Recycling	No food waste recycling program is offered by the City at this time.	6 month pilot for 10 restaurants selected by City with option to implement full commercial program w/proposal provided by contractor at that time	Remove organics from the landfill. Higher waste diversion rate.
Recognition for Commercial Recycling	Businesses may apply for awards by the state and South Bay Business Environmental Coalition, but only a few businesses win. Santa Monica Bay Restaurant Certification Program rewards efforts with various storm water issues.	Hauler & City begin recognition program to reward all businesses with excellence in waste reduction. Maybe work with Santa Monica Bay Restaurant Certification Program.	Works toward increasing diversion, great PR for businesses, positive outreach. City, hauler and business will identify areas of growth. Provides education and auditing.

<p>Construction & Demolition (C & D)</p>	<p>Construction community can take C&D materials to any facility as long as the diversion is met; landfill and recycling tickets are submitted to City for approval.</p>	<p>Place clause in contract stating that the City may opt for hauler franchise of C & D at any time during contract and hauler must meet 70% diversion.</p>	<p>Greater accountability with reporting; higher accuracy; guaranteed diversion percentage from contracted facility</p>
<p>Commercial Hazardous Waste (HW)</p>	<p>Businesses can participate in SAFE Collection Center (Hyperion) Small Waste Generator Program or hire a hazardous waste company to pick up their toxic materials.</p>	<p>HW service by appointment & co-pay charge</p>	<p>Less contamination in trash and convenience</p>
<p>Trash Overage Charge Program</p>	<p>Trash cans/bins monitored for excessive capacity: pictures of overages placed on letter to business. 2 warning letters are sent, then 3rd offense an overage charge is applied.</p>	<p>Formally include overage program in contract & expand program to monitor trash enclosure cleanliness.</p>	<p>Continued accountability. Improve storm water (NPDES) conditions by reducing overflowing debris. Improve appearance of business.</p>
<p>Free Bulky Item Pickup for Multi-Family Dwellings (MFD)</p>	<p>Multi-Family Dwellings are billed as commercial and are charged \$10 per bulky item</p>	<p>1 FREE visit per unit per building per year</p>	<p>Reduced "illegal dumping" when tenant moves out. Quicker clean up. (If it's free for single family should be free for multi-family)</p>
<p>Multi-Family Dwellings Outreach Plan</p>	<p>MFD outreach materials will begin distribution 2009</p>	<p>Staff to develop scope of MFD outreach plan for inclusion in contract</p>	<p>Increased recycling education & efforts toward higher diversion rates. Assist property managers with training tenants.</p>

<p>"Recycle Ranger" Consultant</p>	<p>Hauler hires a consultant to perform commercial outreach, education.</p>	<p>Hauler to provide \$100,000 for City to contract a consultant to perform commercial and residential outreach.</p>	<p>Aggressive outreach to increase recycling accounts, educate commercial & residential sector, provide commercial audits and school education.</p>
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MBUSD Schools Recommendations: All costs regarding MBUSD school recommendations will be distributed across residential and commercial rates.

<u>TOPIC</u>	<u>CURRENTLY WHAT'S DONE</u>	<u>RECOMMENDATION</u>	<u>BENEFITS TO CHANGE</u>
<p><i>Include Schools as City Facilities for Free Services</i></p>	<p>MBUSD is a state agency and are not required to use the City's hauler. Hauler categorizes MBUSD as a commercial account and billing is processed under commercial rates. City facilities and public containers are serviced without cost to the City's general fund.</p>	<p>Include MBUSD as City facilities to receive services without cost. If MBUSD chooses not to be serviced by the City's hauler, school district must go out to bid for all refuse services.</p>	<p>MBUSD will save upwards of \$60,000 per year on refuse costs. MBUSD budget will be slightly eased by the removal of refuse costs. Costs will be covered by rate payers.</p>
<p><i>School Outreach Option #1</i></p>	<p>Hauler is contracted to have someone available for assemblies, but no formal school outreach plan is documented in contract.</p>	<p>Hauler to provide \$100,000 recycling education grant annually to MBUSD for programs in 7 district schools. Funds accepted, and managed through PTA. Each school will be responsible for its own outreach plan.</p>	<p>School has greater control over outreach and programs implemented. Consistent programs for kids, improved outreach & education, better effort toward higher diversion rates. Costs will be covered by rate payers.</p>

<p>School Outreach Option #2</p>	<p>Hauler is contracted to have someone available for assemblies, but no formal school outreach plan is documented in contract.</p>	<p>Hauler to provide a suggested school outreach plan.</p>	<p>A formalized school outreach plan will provide great momentum with the kids. Costs will be covered by rate payers.</p>
<p>School classroom & public area recycling containers</p>	<p>School is responsible for providing its own classroom and public area recycling containers (hauler awarded grant to MBUSD in 2008 & donated containers to help some schools with classroom recycling).</p>	<p>Hauler to provide recycling containers for classrooms & public areas as needed in the 7 MBUSD schools.</p>	<p>Opportunity for full recycling participation in every district school. Cost savings to school district. Costs will be covered by rate payers.</p>

Additional Items

<u>TOPIC</u>	<u>CURRENTLY WHAT'S DONE</u>	<u>RECOMMENDATION</u>	<u>BENEFITS TO CHANGE</u>
<p>Alternative Fuel Vehicles</p>	<p>Hauler upgraded collection fleet to Compressed Natural Gas (CNG) vehicles.</p>	<p>Hauler must use alternative fuel vehicles for collection if fleet is available at inception of the contract. If fleet is not available, the hauler has 5 years to upgrade the fleet to alternative fuel.</p>	<p>Lower carbon footprint from alternative fuel vehicles.</p>
<p>Hazardous Waste Pick Up for City Facilities</p>	<p>City facility Hazardous Waste disposal is coordinated through the Public Works Department using different vendors.</p>	<p>Include Hazardous Waste pick up services as part of the City collection.</p>	<p>Disposal will be more convenient.</p>

<p><i>Styrofoam Recycling</i></p>	<p>Styrofoam is placed in the trash container; it is not currently a part of the recycling program.</p>	<p>Include clause stating "When hauler is able to recycle Styrofoam, City reserves the right to add Styrofoam recycling into contracted list of recyclables without additional expense." *Phase II will address Styrofoam issue as well.</p>	<p>Styrofoam is non-biodegradable and will be prevented from entering the landfill.</p>
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CONCLUSION:

Staff recommends that City Council discuss and affirm which SWRS recommendations that Council would like to include in the draft of the next solid waste contract.

B) Request for Proposal

RECOMMENDATION:

Staff recommends that City Council go out to bid for the City's next solid waste contract, that staff be directed to develop a Request for Proposal (RFP) and return to City Council for approval.

FISCAL IMPLICATION:

The Request for Proposal (RFP) process requires competitive proposals from interested haulers whereas a Contract Renegotiation calls for negotiating a revised contract with the current hauler to include new services. Although costs are expected to incur inflationary increases since last going out to bid, additional services added will increase the contract costs as well. These costs cannot be determined until pricing is received from haulers through the Request for Proposal process.

BACKGROUND:

On November 1, 2002 the City of Manhattan Beach entered into a seven year solid waste franchise agreement with Waste Management. Last year City Council approved the optional one-year extension, and the new expiration date of the Waste Management contract is October 31, 2010.

It is recommended by industry professionals to begin the RFP process 12-18 months in advance of the expiration date to allow ample time for contract review, revisions, approval and possible billing or operational changes. With the creation of the Environmental Task Force, evaluation of the City's current contract began in November 2008 with the SWRS comprised of three residents and Staff support. Now with approximately 18 months until the expiration of the current haulers contract, and several suggested changes and additions, formal preparation of the next solid waste contract should begin.

DISCUSSION:

The RFP process allows the City to select from qualified haulers proposals that would include evaluation of a combination of costs and ability of hauler to meet the service portions of the contract. Renegotiation of the contract with the existing hauler allows the City to continue a contractual relationship with a known hauler and their abilities are demonstrated by their past performance.

Below is a table of the methods used in local South Bay Cities for selection of a waste hauler. Nine cities used the Request for Proposal process and four renegotiated with their current contracted hauler.

Solid Waste Contracting Method in South Bay Cities*

City	Population	Waste Hauler	Waste Hauler Selection Process
Carson	98,000	Waste Management	RFP
Gardena	62,000	Phoenix	RFP
Inglewood	119,000	Waste Management	Negotiated
Hawthorne	89,000	Consolidated	RFP
Redondo Beach	67,000	Consolidated	RFP
Manhattan Beach	37,000	Waste Management	RFP
El Segundo	17,000	Consolidated	Negotiated
Rancho Palos Verdes	43,000	Waste Management & Universal Waste	RFP
Hermosa Beach	19,000	Consolidated	Negotiated
Lawndale	34,000	Consolidated	RFP
Lomita	21,000	Cal Met	Negotiated
Palos Verdes Estates	14,000	Athens	RFP
Rolling Hills Estates	8,000	Waste Management	RFP

*As of 2008

There are pro's and con's for RFP and renegotiation. Below are some factors for City Council to consider:

	Request for Proposal (RFP)	Renegotiation of Current Contract
Pro	Guaranteed competitive pricing.	Allows City to work with hauler who has successfully provided services.
Pro	Best method if introducing programs new to the City or industry.	Existing contractor knows City's customers' needs and demands.
Pro	Assures public of most competitive cost proposal.	Transition to provide additional services would be minimal.
Con	New haulers abilities are only based on references.	Price for services established in non-competitive basis, while there would be comparisons to neighboring agencies it is very difficult due to different service levels.
Con	Selection process is more difficult and may include some subjective components in addition to service costs.	Cost basis for new programs established in non-competitive basis.

CONCLUSION:

Staff recommends that City Council approve a Request for Proposal process for the next solid waste contract given that the total value of the contract may exceed twenty-five (25) million dollars and the RFP process offers the City the best opportunity to receive services on a competitive cost basis.

C) Solid Waste Professional Services

RECOMMENDATION:

Staff recommends that City Council authorize the City Manager to negotiate a solid waste professional services contract with Hilton, Farnkopf & Hobson, LLC.

FISCAL IMPLICATION:

In the FY 2008-2009 Adopted Budget, \$132,000 is specifically available to fund the professional services needs for the new solid waste contract and Staff anticipates this amount will cover the professional services with HF&H.

BACKGROUND:

Hilton, Farnkopf & Hobson, LLC (HF&H) was first contracted by the City of Manhattan Beach in 2001 to provide professional services for the City to develop a waste hauler contract and develop options by the Request for Proposal (RFP) process. HF&H helped create the current waste hauler contract by structuring programs and services to keep the City in compliance with AB 939, the States requirement for cities to recycle 50% of the municipalities' total waste. This contract has also benefited the City of Manhattan Beach residents and business owners with some of the lowest, competitive rates in the South Bay over the past seven years. Recycling bins distributed by the hauler became free for residents and commercial properties. Before this contract, there was no required age limit for the collection vehicles – the current contract caps the age of all collection trucks servicing Manhattan Beach at ten (10) years. The City's landfill disposal rate was locked in at a flat rate over the term of the contract, and no rate increases outside the annual July 1st increase may be given. Because of these clauses, Manhattan Beach residents and businesses maintained a steady rate increase over the last seven years, unaffected by fuel and operational changes.

DISCUSSION:

HF&H has a strong reputation as a leader in solid waste consulting services and provides contract development and analysis of hauler proposals. Their staff includes accountants, economists, engineers, and management consultants with both public sector and industry experience. HF&H has provided solid waste services to over 250 agencies including nine South Bay Cities, and are currently providing contracting assistance to the cities of Lawndale, Rancho Palos Verdes and Redondo Beach. This experience represents the impressive resources and technical expertise readily available to HF&H. Results from a third-party customer service survey spanning twelve years showed that 100% of responding cities would use HF&H again and would recommend their services to other cities.

HF&H is familiar with the solid waste issues, efforts and goals of the City including the 2007 Green Book and the Environmental Task Force. Because of the current contract success and familiarity with Manhattan Beach, Staff is confident that Hilton, Farnkopf & Hobson, LLC will create a cost-effective, dynamic contract to meet the needs of the Manhattan Beach community.

The next solid waste contract may exceed twenty-five (25) million dollars. The expected costs for

HF&H's professional services calculate to roughly less than half of one percent of the estimated contract total. The accuracy, strength and cost-effectiveness of this contract are imperative. City Staff does not have the resources or expertise to develop complex solid waste contracts. With the changes in the economy as well as new trends in solid waste and recycling programs, HF&H's staff and resources equip them to create an appropriate contract for Manhattan Beach.

Attached is a sample scope of work from HF&H including an outline of tasks, descriptions and a work plan chart listing the number of hours and type of staff necessary to perform each task. It is representative of the work HF&H would perform for Manhattan Beach. The scope includes the following:

- Review all existing documents and meet with City staff to discuss key issues and confirm the detailed schedule for the procurement process.
- Prepare detailed project plan documenting the key issues, existing and alternative solid waste and recycling services, and schedule.
- Document and discuss the current contract terms versus the new proposed terms.
- Present new terms/services to City Council for feedback on all outstanding issues and provide HF&H direction in completing the RFP and agreement.
- Gather and review operating data so that haulers can properly calculate their pricing for services. HF&H has found that when proposers are confident about the accuracy of operating data contained in the RFP, they propose lower rates and include fewer contingency costs.
- Prepare draft RFP and agreement, submit to City Attorney, other staff and potential proposers for feedback. HF&H will then revise the RFP and agreement based on the feedback received.
- Attend City Council meeting to approve the RFP package.
- Prepare for and attend proposers' conference where haulers may ask questions on any part of the draft RFP package. HF&H will provide methods to control contact between City staff and proposers at the discretion of City Council's desired level.
- Prepare and make available an addenda from the proposers' conference.
- Review proposals for completeness.
- Evaluate complete proposals, prepare follow-up questions for proposers, review responses received from proposers, and clarify all unresolved issues.
- Interview proposers along with the City's evaluation team
- Contact references for recommended proposer.
- Prepare draft evaluation report.
- Review City comments and prepare final evaluation report.
- Participate in negotiating session.
- Prepare revised portions of agreement.
- Attend the City Council meeting when final agreement will be approved.

CONCLUSION:

Staff recommends that City Council authorize the City Manager to negotiate a solid waste professional services contract with Hilton, Farnkopf & Hobson, LLC, based on their reputation of services, experience and knowledge of solid waste hauler contracts. Their knowledge of the existing Manhattan Beach contract and needs ensure the City its best opportunity to craft the best

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possible hauler contract. Drafting a new or revised solid waste contract is very complex, especially when introducing new programs or billing procedures. HF&H has resources from assisting over 250 agencies with solid waste issues and contracts. This expertise is recommended for a contract that may exceed twenty-five (25) million dollars and is vital to the Environmental Task Force's goals and efforts as a "green" city.

D) Letter of Notice

RECOMMENDATION:

Staff recommends that City Council approve the letter of notice (attached) so that the City has the option to franchise a Construction and Demolition hauler in five years.

FISCAL IMPACT:

An initial fiscal implication of approximately \$1,200 will cover mailing costs for Five Year Noticing Rights letter to all contractors, subcontractors and construction haulers licensed in the City. If City Council chooses to franchise Construction and Demolition hauling after the five year waiting period, contractors and sub-contractors who currently self-haul will utilize the franchised hauler and pay for hauling services. At that time, Staff will perform special outreach to assist the Manhattan Beach construction community with the change. Costs and accuracy of meeting regulatory reporting requirements would be reduced.

BACKGROUND:

In 1989, the California State legislature passed Assembly Bill (AB) 939, which calls for local jurisdictions to divert 50% of solid waste disposal from landfills by January 1, 2000. The law made local jurisdictions responsible for developing and implementing programs to achieve the mandated diversion level and to report progress to the State. Achievement of the diversion goal is backed by the potential for penalties including fines of up to \$10,000 per day. One of the programs the City of Manhattan Beach created in 2004 to assist with the AB939 goal is Construction and Demolition recycling. Additional legislature has been submitted to the State over the years to increase the diversion requirement. The City of Manhattan Beach needs to prepare programs for a stronger requirement as this increase is inevitable with the changing climate.

The Construction and Demolition recycling program, adopted in 2004, requires contractors for all demolition and construction projects with a total value of \$100,000 or more to recycle at least 50% of its waste. Contractors are required to complete a "Waste Management Plan" (WMP) form before a permit can be issued. On this WMP, the contractor is required to provide the recycling facility information the materials will be taken to as well as complete a plan table to determine how much waste he/she will generate and need to create a diversion plan for.

One area of growth for this program is landfill and recycling receipt accountability, as the contractors turn in landfill and recycling receipts on an honor system. What this means is that as long as they meet their 50% diversion requirement and the tonnage is within reason of their guesstimated amount the tickets are signed off. What happens though, and the reason for consideration of this item, is that contractors sometimes do not turn in all the landfill and recycling receipts for the job. Staff finds this out when different packets of tickets with the same permit number are turned in, or when a contractor does not meet the diversion rate and must provide the more evidence of recycling (or risk a fine). When asked if any tickets were not turned in, most contractors are able to find additional tickets for the job. The consistent ease of finding more tickets is cause to doubt the effectiveness of the current honor system. The program needs to be more accountable to prepare for inevitable State diversion increases. Because the contractors can

choose any hauler that is licensed in the City, or self-haul their waste, accountability is difficult. There are hundreds of pending permits awaiting tickets and approval and there is not enough staff to frequently visit all construction sites to manage the tonnage collected.

DISCUSSION:

With the volume of construction performed in Manhattan Beach, a successful Construction and Demolition program requires a higher level of monitoring. The City's current non-exclusive system for construction haulers makes it difficult to properly promote and monitor progress toward higher diversion goals within the sector and meet the ever increasing regulatory demands. Program consistency is challenging. The City has no authority at this time to reduce the number of haulers in the Construction and Demolition sector because haulers have "5-years continuation rights" by State law. The specific language of the Public Resources Code as it pertains to the continuation rights of the haulers is copied below.

"Public Resources Code – Section 49520. If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been lawfully provided for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract.

If the solid waste enterprise has an exclusive franchise or contract, the solid waste enterprise shall continue to provide those services and shall be limited to the unexpired term of this contract or franchise or five years, whichever, is less."

By giving the existing haulers (which includes contractors and sub-contractors since they can self-haul) a "Five-Year Notice" of the City's intent to grant an exclusive franchise, the City will have the option to grant an exclusive franchise for the City's waste hauler to gain firmer control of C & D recycling services. By creating an exclusive franchise system for C & D, the City Staff would be better able to promote and require recycling efforts, raise the City's diversion rate, and provide consistency in collection and disposal by one hauler.

CONCLUSION:

Staff recommends that City Council approve the letter of notice (attached) so that the City has the option to franchise a Construction and Demolition hauler in five years. Five years after the distribution of the letter, Staff will return to City Council for final approval of the franchise.

Attachments:

1. Sample scope of Request for Proposal process
2. Letter of Notice

**SCOPE FOR CONDUCTING A
REQUEST FOR PROPOSAL PROCESS
FOR A SOLID WASTE COLLECTION AGREEMENT**

SCOPE

TASK 1: Define Work Plan & Develop Procurement Strategy

Subtask 1A: Initiate Project

Under Subtask 1A, HF&H will:

Review existing background documents and prepare for kickoff meeting

HF&H will review the existing solid waste collection franchise agreement and the City's solid waste and recycling ordinances to gain an understanding of the City's existing solid waste programs and service arrangements. Having drafted the current agreement and conducted the prior procurement process, and provided consulting services to the City's Environmental Task Force, HF&H already understands many of the City's programs and issues. HF&H will review the recommendations made by the Environmental Task Force to the City Council, and the Council's response.

Meet with City staff

HF&H will prepare for and conduct a meeting with City staff to discuss key issues relating to the procurement of a new franchise agreement, and confirm the detailed schedule for the procurement process.

Prepare the project plan and analysis of the current agreement

Based on discussions with City staff, HF&H will prepare a Project Plan that documents the key issues, existing and alternative solid waste and recycling services, and schedule. HF&H will provide a copy of the Project Plan to the City and use it as a tool to manage the procurement process.

Subtask 1B: Define Scope of Services and Confirm with City

The purpose of this task is to define the scope of the solid waste services to be proposed upon in the RFP package. HF&H will:

Document recommended options for inclusion in RFP and agreement

Prepare a document describing our recommended changes to existing services and contract terms, and compare the current and proposed conditions. This comparison facilitates an informed discussion and decision-making process.

Present recommended services/terms to City

HF&H will present the recommended services and agreement terms to either the City Council or, if appropriate, to a steering committee appointed to lead the procurement process. At this meeting, the City Council or steering committee is expected to make decisions regarding outstanding issues and provide HF&H with the direction to be followed in completing the RFP and agreement.

Subtask 1C: Gather and Review Operating Data

HF&H will collect any data available regarding the current services provided. HF&H will prepare data collection forms to assist the City and/or hauler in providing additional information in a user-friendly format. The City bills customers and, therefore, the City will be able to provide some of the necessary data.

It has been HF&H's experience that when proposers are confident about the accuracy of operating data contained in the RFP, they propose lower rates and include fewer contingency costs. Collecting data in this manner also may uncover additional issues, such as poor reporting or service issues that we would address in the new agreement. HF&H will analyze the data gathered for overall reasonableness.

TASK 2: Prepare and Issue Request for Proposals

Subtask 2A: Prepare draft RFP and agreement

Based on the information and direction received in prior tasks, HF&H will prepare the draft RFP, agreement, and criteria to be used in evaluating the proposals received.

Subtask 2B: Upon review by the City Attorney, other City staff and potential proposers, revise RFP and agreement

HF&H will submit the draft RFP and agreement to City staff, the City Attorney, and potential proposers for review. HF&H will provide a list of potential proposers to the City. After City staff and the potential proposers have reviewed the documents and provided HF&H with their written comments, HF&H will confer with City staff and make appropriate revisions once to these documents. The draft agreement is included in the RFP as an attachment. The City Attorney is requested to make any changes directly to the documents in a strike-and-replace format.

Subtask 2C: Attend Council meeting to approve RFP package

HF&H will attend one City Council meeting at which the City Council will approve the RFP and draft agreement. Once the RFP and draft agreement have been approved by the City Council, they can be distributed to potential proposers. HF&H will provide the City with a recommended list of potential proposers.

Subtask 2D: Prepare for and attend proposers' conference

HF&H will schedule, along with City staff, a proposers' conference to be conducted shortly after release of the RFP. Potential proposers will have an opportunity to receive clarification of any issues and ask questions at this conference. HF&H will also accept written requests for clarification until a set deadline. HF&H recommends that contact between proposers and the City be controlled and will suggest methods to do so, based on City staff and City Council's desired level of interaction with proposers.

Subtask 2E: Prepare addenda

HF&H will prepare written responses to questions posed at the proposers' conference, or submitted in writing, and prepare any necessary addenda arising from issues posed at the proposers' conference. All questions and responses shall be made available to all proposers in attendance at the conference.

TASK 3: Review and Evaluate Proposals

Subtask 3A: Review proposals for completeness

HF&H will perform an initial review of each proposal submitted for compliance with the City's RFP requirements and disregard incomplete proposals.

Subtask 3B: Evaluate complete proposals

The specific criteria for which HF&H evaluates the complete proposals will be developed using input received from City staff and the City Council. Based on our experience in other cities, HF&H anticipates evaluating the proposals based on the following criteria:

- Exceptions taken to the terms and conditions of the draft agreement;
- Proposed total compensation (rate revenue) over the term of the agreement, based on the rates included in the financial section of the proposal;
- Experience of the proposers in providing the requested services in other jurisdictions, based on information contained in their proposals;
- Financial resources of the proposers, based on information in their proposals; and,
- Unique proposal features that exceed the RFP's minimum requirements.

Subtask 3C: Prepare follow-up questions for proposers

After performing an initial review and evaluation, HF&H will provide each proposer with a summary evaluation of the company's individual proposal in order to confirm our understanding of the information presented in the proposal.

Subtask 3D: Review responses and clarify unresolved issues

HF&H will review responses received from proposers and resolve any open issues to help ensure that proposers are satisfied with the representation of their proposals.

Subtask 3E: Interview proposers

At this stage in the process, usually one, two, or three proposals are clearly more likely to be selected. Along with the City's evaluation team, HF&H will interview up to four proposers, scheduling all interviews on one day.

Subtask 3F: Contact references for recommended proposer

HF&H will contact references provided for the proposer to be recommended to the City Council for award of the agreement. HF&H will summarize the results of the reference checks within the evaluation report.

Subtask 3G: Prepare draft evaluation report

All proposals receive a preliminary evaluation. A detailed evaluation is performed of the one or two proposals that appear to offer the most value for the services and costs proposed. Additionally, HF&H will review the overall reasonableness of the operational and financial assumptions contained in the technical section of the proposals selected for detailed evaluation. After the evaluation is complete, HF&H will provide the City with a report describing the evaluation results.

Subtask 3H: Review City comments and prepare final evaluation report

HF&H will review and incorporate City comments into the evaluation report and provide a final evaluation report

TASK 4: Negotiate With Top Ranked Contractors, and Prepare a New Agreement with Selected Contractor for City Council Approval

Subtask 4A: Participate in negotiating session

HF&H will participate in a negotiation session with one or more haulers. Based on prior experience, final negotiations can usually be completed during one session per proposer, and the fee estimate includes costs for one session with one proposer. However, the City may prefer to negotiate with multiple proposers at this time, as multiple proposals may appear attractive prior to finalizing the agreement(s). Proposers are most cooperative when they are still in competition. After finalizing negotiations, HF&H would then assist the City's evaluation team in its determination of a final selection. If the City desires to negotiate further with the final selection, HF&H would assist in those negotiations as well.

Subtask 4B: Prepare revised portions of agreement

Based upon the negotiations, HF&H will make one set of revisions to the final agreement negotiated with each proposer and ask each proposer to sign the agreement. The City can then make a decision based on clearly defined contract terms, verses general promises often made in proposals and during negotiations. Also, at award, neither the successful nor unsuccessful proposers can debate what was or was not the final offer to the City.

Subtask 4C: Attend one City Council meeting for approval of final agreement

HF&H will attend the City Council meeting at which the final agreement is expected to be approved.

WORKPLAN

TASK DESCRIPTION	Sr. Vice President	Director	Senior Associates	Associate	Total Hours
1. Define Scope of Services & Prepare Procurement Strategy					
A. Initiate Project					
1 Review existing documents and prepare for kickoff meeting	6	0	12	0	18
2 Meet with City staff (meeting #1)	4	0	4	0	8
3 Prepare Project Plan	2	0	6	2	10
B. Define Scope of Services and Confirm with City					
1 Review current service methods	8	0	8	0	16
2 Document recommended options for inclusion in RFP	4	0	4	1	9
3 Present recommended services/terms to Council (meeting #2)	6	0	6	0	12
C. Gather and Review Operating Data	4	16	16	12	48
2. Prepare and Issue Request for Proposals					
A. Prepare draft RFP and Contract	12	8	60	50	130
B. Revise documents once after review by City Attorney, other City staff, and potential proposers	8	0	8	0	16
C. Attend Council meeting to approve RFP package (meeting #3)	6	0	6	0	12
D. Prepare for and attend proposers' conference (meeting #4)	4	0	6	0	10
E. Prepare addenda	4	2	12	2	20
3. Review and Evaluate Proposals					
A. Review proposals for completeness	1	0	4	0	5
B. Evaluate complete proposals (maximum of four)	12	0	40	16	68
C. Prepare follow-up questions for proposers	4	0	8	0	12
D. Review responses and clarify unresolved issues	4	0	8	0	12
E. Meet with City staff to discuss preliminary evaluation (meeting #5)	5	0	5	0	10
F. Interview proposers (meeting #6)	8	8	8	0	24
G. Contact references for recommended contractor	1	0	1	6	8
H. Prepare evaluation report	12	0	24	16	52
I. Review City comments and prepare final evaluation report	4	0	8	0	12
4. Negotiate Final Agreement and Prepare a New Agreement					
A. Participate in one negotiating session (meeting #7)	8	0	8	0	16
B. Prepare revised portions of Agreement	8	0	16	0	24
C. Attend Council meeting for approval of final Agreement (meeting #8)	6	0	6	0	12
5. Manage Project and Prepare Workpapers	4	2	4	2	12
Total Hours	145	36	288	107	576

Attachment 2



City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 802-5000 FAX (310) 802-5001 TDD (310) 546-3501

<DATE>

<Hauler>

<Address>

<City, State, Zip>

Re: **Five (5) Year Notice of City's Intention to Grant an Exclusive Franchise**

Dear Sir or Madam,

This letter is to notify you of the City of Manhattan Beach's intention to grant a franchise for the collection, handling and disposal of construction and demolition waste in five (5) years. This notice is provided pursuant to Public Resources Code Section 49520.

"Public Resources Code – Section 49520. If a local agency has authorized, by franchise, contract, license, or permit, a solid waste enterprise to provide solid waste handling services and those services have been lawfully provided for more than three previous years, the solid waste enterprise may continue to provide those services up to five years after mailed notification to the solid waste enterprise by the local agency having jurisdiction that exclusive solid waste handling services are to be provided or authorized, unless the solid waste enterprise has an exclusive franchise or contract.

If the solid waste enterprise has an exclusive franchise or contract, the solid waste enterprise shall continue to provide those services and shall be limited to the unexpired term of this contract or franchise for five years, whichever, is less."

If there are any questions please contact the Public Works Department at (310) 802-5313.

Sincerely,

Jim A. Arndt
Director of Public Works



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Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Richard Thompson, Interim City Manager

FROM: Jim Arndt, Public Works Director
Anna Luke, Management Analyst

DATE: April 6, 2010

SUBJECT: Consideration of Seven-Year Waste Management Solid Waste Contract and Franchise Agreement of an Estimated Value of \$25,000,000 or Initiate a Request for Proposal Process

RECOMMENDATION:

Staff recommends that the City Council discuss and provide direction to either:

1. Approve the negotiated franchise agreement with Waste Management.
And if Recommendation #1 is chosen,
2. Direct Staff as to “basic” or “enhanced basic” franchise agreement, and optional programs.

Or

3. Seek a Request for Proposal (RFP) for waste hauling services to begin after April 30, 2011, when the current Waste Management contract expires.
And if Recommendation #3 is chosen,
4. Authorize the City Manager to approve a Professional Services Agreement with HF&H Consultants, LLC in the amount of \$105,000 to complete the RFP process.

FISCAL IMPLICATION:

1. Renegotiation Process: The new contract requires an increase to user fees dependent upon options selected by City Council.
2. RFP Process: The RFP process requires competitive proposals from interested haulers. Costs cannot be determined until RFP bids are opened and pricing received from haulers is made public, and Council selects a solid waste hauler. The cost for Professional Services from HF&H Consultants, LLC to complete the RFP process would be \$105,000.00 (see Attachment B for work plan).

BACKGROUND:

The City's current solid waste contract with Waste Management will expire on April 30, 2011.

At their July 7th, 2009 meeting, Council opted for the following:

1. Renegotiate the City's current solid waste contract with Waste Management
2. Include all contract recommendations made at the May 5, 2009 City Council meeting by the Environmental Task Force's Solid Waste and Recycling Subcommittee (ETF SWRS) for Council consideration
3. Contracted Professional Services with HF&H Consultants, LLC to facilitate the renegotiation process between Waste Management and the City.
 - a. As part of their scope of work, HF&H Consultants, LLC was directed to return to Council to provide periodic updates on how the negotiation process was proceeding (those updates occurred on 12/01/09 and 02/16/10).

City Council directed Staff at their February 16, 2010 meeting to continue negotiations with Waste Management, solidify all negotiated costs, ETF SWRS recommendations, and return to City Council with the following:

1. Information regarding the City's Administrative Fee.
2. Complete negotiation package including costs and franchise agreement.
 - a. "Basic" – *does not include 12 ETF SWRS recommendations*
3. Complete negotiation package including costs and franchise agreement.
 - a. "Enhanced Basic" – includes 12 ETF SWRS recommendations
4. Negotiated costs and program descriptions for Optional Services
5. Cost for Professional Services from HF&H Consultants, LLC to assist the City with the Request for Proposal process.

Key Legislation

During the February 16th City Council meeting, a question was posed as to any relevant legislation which would encourage the inclusion of any suggested programs. The following laws serve as the City and ETF's direct response to or inspiration for the suggested programs.

1976

Resource Conservation and Recovery Act (RCRA): Principal Federal law in the United States governing the proper disposal of solid waste and hazardous waste.

1989

AB 939: Integrated Waste Management Act – Established hierarchy of waste: waste prevention and source reduction recycling, composting, transformation and land disposal. AB 939 requires 50% diversion of base year waste (half of our city's waste must be recycled). Under this bill, each year the City is required to report on its landfill tonnage and recycling tonnage as well as programs which support the reduction of waste.

2003

SB 20: Electronic Waste Recycling Act – Landmark legislation requiring the collection of an electronic waste recycling fee at the retail point of sale of covered products, and retailers transfer

the fee to the Board of Equalization. The fees are used in offsetting the cost of recycling certain e-wastes. Also, manufacturers of electronic wastes must notify retailers the scope of all covered products.

2006

AB 32: California Global Warming Solutions Act – Requires local government agencies to establish a mandatory commercial recycling ordinance. Adoption is estimated at 2012.

February 9, 2006: Universal Waste (“U-Waste”) added to list of items banned from California landfills (includes batteries, cell phones, fluorescent lamps)

2007

SB 966: Pharmaceutical Take Back and Disposal Program - Requires the California Integrated Waste Management Board (CIWMB) to develop, in consultation with appropriate government agencies, criteria and procedures for model programs for the collection and proper disposal of pharmaceutical waste. Provisions of SB 966 remain in effect until January 1, 2013. The City’s drop off container assists with all medicines except for Sharps.

2008

Section 118286 of the California Health and Safety Code: Sharps Illegal in Trash & Recycling - Beginning September 1, 2008, State law makes it illegal to dispose of sharps waste in the trash or recycling containers, and requires that all sharps waste be transported to a hazardous waste collection center in an approved sharps container.

DISCUSSION:

Administrative Fee

The City’s Administrative Fee (used to capture City costs necessary to support Refuse collection) is currently under review and is being evaluated as part of the City’s Cost Allocation Study. This study should conclude in late May. Staff requests that City Council allow Staff to return on the June 15, 2010 City Council meeting with the requested updated Administrative Fee information. The Administrative fee would be added to the selected Waste Hauler fees to establish user rates. For the purpose of comparison in this report, the current Administrative fee of 17.24% has been used.

Solid Waste Contract Options

City Council must decide whether to accept the Waste Management Negotiation Package or begin the Request for Proposal process. There are several items to consider. For this reason, the following section is divided into two parts, “Waste Management Renegotiation” and “Request for Proposal.”

Waste Management Renegotiation

The Negotiated Waste Management Franchise Agreement (see Attachment A), if approved and

accepted by City Council, would begin on October 1, 2010. HF&H Consultants, LLC, believes that the negotiations have resulted in a reasonable cost contract.

The following three sections represent contract options. If Council chooses to award Waste Management the City's next refuse contract, one of two service levels, BASIC or ENHANCED BASIC will need to be chosen. In addition, City Council will need to choose whether or not to add any of the OPTIONAL SERVICES.

BASIC negotiation package (Table 1): Franchise Agreement comprised of current services with no service enhancements resulting in a rate increase of approximately 16% over three years. Table 1 below shows the percentage increase for each contract year.

Table 1:

Contract Year	Percentage Increase
Year 1 (10-01-10)	5%
Year 2 (07-01-11)	5.95%
Year 3 (07-01-12)	4%
Year 4 (07-01-13)	Formula listed in Exhibit3
Year 5 (07-01-14)	Formula listed in Exhibit3
Year 6 (07-01-15)	Formula listed in Exhibit3
Year 7 (07-01-16)	Formula listed in Exhibit3

ENHANCED BASIC negotiation package (Table 2): Franchise Agreement comprised of services resulting in a 19% rate increase over three years, of which 3% of the increase in the first year is devoted to twelve service enhancements recommended by the City's ETF. Of the 3% enhancement increase, approximately 2% is directly associated with the automation of the City's Sand Section and 1% is directly associated with the remaining enhancements. Table 2 below shows the percentage increase for each contract year.

Table 2:

Contract Year	Percentage Increase
Year 1 (10-01-10)	8%
Year 2 (07-01-11)	5.95%
Year 3 (07-01-12)	4%
Year 4 (07-01-13)	Formula listed in Exhibit3
Year 5 (07-01-14)	Formula listed in Exhibit3
Year 6 (07-01-15)	Formula listed in Exhibit3
Year 7 (07-01-16)	Formula listed in Exhibit3

In brief, the ENHANCED BASIC proposed rate increase is 19% over three years. Three percent

of the increase is for ENHANCED BASIC services recommended by the City's ETF. Without the enhancements, the BASIC proposed rate increase would be 3% less, or 16% over the three years.

Tables 3 and 4 show the user rates for both BASIC and ENHANCED BASIC negotiation packages. Rates are shown for the first three years of the contract. Beginning July 1, 2013 rates will be adjusted based on the formula in Exhibit 3 of the contract (Attachment A). Optional Services will be discussed later in the report.

Table 3:
BASIC SERVICES*:
(Includes 17.24% administrative fee)

Date	Current	January 1, 2011	July 1, 2011	July 1, 2012
Rate Increase	n/a	5.00%	5.95%	4.00%
Residential Rate Based on Current Flat Rate Structure (NOT RECOMMENDED—shown for comparison only)	\$13.74	\$14.43	\$15.29	\$15.90
Residential Volume-Based Rates**:				
35-gallon	n/a	\$12.81	\$13.57	\$14.11
65-gallon	n/a	\$14.64	\$15.51	\$16.13
95-gallon	n/a	\$16.61	\$17.60	\$18.30
Commercial Rate Category				
Commercial Can – 1x/week	\$14.98	\$15.73	\$16.67	\$17.34
2 yard bin – 1x/week	\$76.01	\$79.81	\$84.56	\$87.94

*Beginning July 1, 2013, annual rate adjustments based on contract formula using published price indices

**Contractor rates would begin October 1, 2010. City rate adjustment would go into effect January 1, 2011.

The City would pay the difference to the contractor from October 1, 2010 – December 31, 2010 from reserves in the Refuse Fund.

ENHANCED BASIC (19% Increase):
INCLUDES 12 ETF RECOMMENDATIONS

1. Automation of Sand Section
 - *This comprises 2% of the 3% increase*
2. Multi-family Recycling Outreach
3. Free Abandoned Item Collection

4. Commercial Outreach Recognition Program
5. Sharps Program – Eliminate Co-Pay
6. Free Hazardous Waste Collection for City Facilities’ HHW
7. Natural Gas-Powered Collection Vehicles
8. Increased School Recycling Outreach
9. Increased School Recycling Containers and Collection
10. Multi-family and Commercial Mixed Waste Processing
11. Commercial Trash Overflow Program
12. Collection of Styrofoam/polystyrene (WM launched formal collection in 02/10)

Table 4:
ENHANCED BASIC SERVICES*:
 (Includes 17.24% administrative fee)

Date	Current	January 1, 2011	July 1, 2011	July 1, 2012
Rate Increase	n/a	8.00%	5.95%	4.00%
Residential Rate Based on Current Flat Rate Structure (NOT RECOMMENDED – shown for comparison only)	\$13.74	\$14.84	\$15.72	\$16.35
<u>Residential Volume-Based Rates**:</u>				
35-gallon	n/a	\$13.18	\$13.96	\$14.52
65-gallon	n/a	\$15.06	\$15.96	\$16.60
95-gallon	n/a	\$17.08	\$18.10	\$18.82
<u>Commercial Rate Category</u>				
Commercial Can – 1x/week	\$14.98	\$16.18	\$17.14	\$17.83
2 yard bin – 1x/week	\$76.01	\$82.09	\$86.97	\$90.45

*Beginning July 1, 2013, annual rate adjustments based on contract formula using published price indices
 **Contractor rates would begin October 1, 2010. City rate adjustment would go into effect January 1, 2011. The City would pay the difference to the contractor from October 1, 2010 – December 31, 2010 from reserves in the Refuse Fund.

OPTIONAL SERVICES

OPTIONAL SERVICES: Three additional programs were recommended by the ETF which the

City Council must adopt or reject. In addition, two programs previously presented as Optional Services are now pilot programs included in the franchise agreement. Table 5 shows the matrix of programs in the Optional Services category, including the sector it will impact (residential and/or commercial). Program descriptions and costs follow Table 5. These optional services are considered operationally feasible by Waste Management and would require an additional cost to the overall contract rates.

Table 5:
OPTIONAL SERVICES MATRIX

SECTOR	Door-to-Door HHW Pick-up	City-Wide Commercial and Multi-Family Mixed Waste Processing	Recycle Ranger	Residential Food Waste Collection*	Commercial Food Waste Collection*
Residential	YES		50% Yes	JULY 2012 PILOT	
Commercial		YES	50% Yes		

*No longer considered as separate options; now listed in contract as a 90 day pilot program starting July 1, 2012

1. Door-to-Door Household Hazardous Waste (HHW) Pick Up

<u>Program Start Date</u>	<u>Who Benefits</u>	<u>Who Pays</u>	<u>Annual Program Cost</u>	<u>Monthly Cost Per Home</u>
October 1, 2010	All Residential and Multi-Family customers	Residential cart customers	\$85,000	\$0.51

Wastes may be hazardous wastes if they exhibit any of the four characteristics of a hazardous waste (ignitability, corrosivity, reactivity, and toxicity). Improper disposal of household hazardous wastes can include pouring them down the drain, on the ground, into storm drain or sewers, or in some cases putting them out with the trash and recycling cans. The dangers of such disposal methods might not be immediately obvious, but improper disposal of these wastes can pollute the environment and pose a threat to human health.

Examples of Household Hazardous Wastes and what makes them Hazardous:

- Batteries--Includes all batteries, AAA, AA, C, D, button cell, 9-volt, and all others, both rechargeable and single use --Cadmium, Copper and (in older batteries) Mercury
- Cell Phones-- Antimony , Arsenic, Beryllium, Cadmium, Copper, Lead, Nickel, Zinc
- Computers and Computer Monitors-- Arsenic, Cadmium, Lead, PCBs
- Electronic Devices-- Lead
- Fluorescent Lamps-- Mercury
- Thermometers-- Mercury
- Non-empty Aerosol Cans-- Propane, Butane, Pesticides
- Televisions-- Arsenic, Cadmium, Lead, PCBs

According to the Environmental Protection Agency (EPA), Americans generate 1.6 million tons of HHW per year and the average home can accumulate as much as 100 pounds of HHW in the basement and garage and in storage closets.

The Door-to-Door HHW Program is a convenient appointment based, unlimited at-home pick-up of household hazardous chemicals and materials for all Manhattan Beach single and multi-family residents. Similar to the current Bulky-Item Pick-up program, both single and multi-family residents may contact Waste Management to schedule an appointment for collection. The difference is that the HHW collection program has unlimited pick-ups.

This program stems from consistent requests to the Public Works Department for a more convenient, weekday-friendly way to dispose of HHW. Residents have shared over and over again that the hassle of loading hazardous materials into their personal vehicles and driving them to another city only on weekends is not helpful. Also, residents have shared that they would participate in disposing of HHW properly if there was a more convenient program available.

The current options for residents are the SAFE Collection Center drop off program at the Hyperion Treatment Plant in Playa Del Rey on Saturdays and Sundays or the LA County Round-Up drop-off programs at various cities around LA County on Saturdays. There are no facilities available to Manhattan Beach residents on weekdays (with the exception of the pharmaceutical drop-off box at the Civic Center) and no general programs for at-home collection. The cities of Inglewood and Orange utilize this program to provide a convenient, reliable way for residents and multi-family customers to correctly dispose of hazardous waste.

For \$0.51 per cart customer per month, residents may dispose of an unlimited amount of HHW from their garages, cabinets, and storage units through the appointment-based program. On the appointment day, residents would place their HHW in the designated area for their residence (area to be determined at time appointment is made, though *not at the curb*).

HHW included in the program is as follows:

- Chemicals (i.e.: household cleaners, paint, small propane tanks, automotive oils, aerosol sprays, pesticides, pool chemicals, etc.)
- Electronic waste (i.e.: TVs, computers, cell phones, gaming machines, printers, DVD players, etc.)
- Universal waste (i.e.: batteries, fluorescent lamps and bulbs, thermometers, etc.)
- Non-controlled Medical waste (i.e.: non-controlled unwanted and expired medication)

2. City-Wide Commercial and Multi-Family Mixed Waste Processing

<u>Program Start Date</u>	<u>Who Benefits</u>	<u>Who Pays</u>	<u>Annual Program Cost</u>	<u>Monthly Increase per Bin Customer</u>
January 1, 2011	All Multi-Family & Commercial Bins	All Multi-Family & Commercial Bins	\$155,000	12% Ex: 2yd bin 1x/week: \$9.85

The City-Wide Mixed Waste Processing Program removes recyclable material from the trash at a Material Recovery Facility (MRF) in order to increase diversion rates and reduce landfill tonnage. While residential recycling rates exceed 50-60% diversion, commercial (which includes Multi-Family) recycling rates are estimated at 20-30%. These low diversion rates inspired the Environmental Task Force to recommend the Mixed Waste Processing Program. Many factors contribute to the low diversion rates including employee training, space and design for recycling inside businesses and multi-family complexes, and employee and multi-family resident turnover. *This program is recommended to be implemented only in addition to the recycling program that is in place. It will not replace recycling cans, carts or bins.* It is a joint effort to capture all unnecessary waste from entering the landfill; this program provides the assistance to remove recyclables from the trash so that they can be made into new products instead of filling up the landfill.

The mixed waste processing requirement included in the Enhanced Basic program will recover 1,365 tons per year of recyclables from the commercial waste stream. With the optional program for additional mixed waste processing in place, an additional 2,184 tons of recyclables will be captured from trash, preventing its disposal in a landfill. These additional 2,194 recovered tons represent approximately 5% of the total waste collected by WM in the City. The cities of Redondo Beach and West Hollywood utilize similar programs to increase diversion rates and reduce landfill tonnage from their business community.

If approved by City Council, the program will increase Multi-Family and Commercial bins customers by 12% beginning January 1, 2011.

3. Recycle Ranger

<u>Program Start Date</u>	<u>Who Benefits</u>	<u>Who Pays</u>	<u>Annual Program Cost</u>	<u>Monthly Increase Per Customer</u>
January 1, 2011	All customers	All customers	\$75,000	2.1% increase Residential: 35- \$0.28 65- \$0.32 95- \$0.36 Commercial: Can- \$0.34 2Yd bin- \$1.72

The Recycle Ranger is a person who does *not* work for the solid waste contractor, but would assist the city (and compliment the hauler’s efforts) with in-person customer education and outreach, resident and business training to reduce landfill tonnage and increase recycling, identifying areas with contamination, program expansion, and audits. This person would canvass the neighborhoods and businesses providing education and identifying areas for improvement. The City of Redondo Beach enlists a Recycle Ranger to assist with anti-scavenging enforcement and monitoring routes to ensure hauler has not missed pickups, is properly returning containers after collection, and is not commingling waste streams. The Recycle Ranger is the in-field City liaison to the hauler, and also helps distribute flyers and assists at City events such as Earth Day. This position is not written into the Waste Management Franchise Agreement as the person will not be employed by the hauler. However, the city would be responsible for making sure the assignments of the Recycle Ranger complimented the efforts made by the hauler so that all three entities working together can reduce landfill tonnage, increase recycling and education.

The reason the Environmental Task Force recommended the Recycle Ranger is to allow the City control of the Recycle Ranger’s tasks and goals.

4. Residential Food Waste Collection

<u>PILOT Start Date</u>	<u>Who Benefits</u>	<u>Who Pays</u>	<u>Annual Program Cost</u>	<u>Monthly Cost Per Home</u>
July 1, 2012	All residential green waste customers	Pilot included in base rate	To be negotiated after pilot at Council direction	n/a

5. Commercial Food Waste Collection

<u>PILOT Start Date</u>	<u>Who Benefits</u>	<u>Who Pays</u>	<u>Annual Program Cost</u>	<u>Monthly Cost Per Home</u>
July 1, 2012	Commercial food waste generating customers	Pilot included in base rate	To be negotiated after pilot at Council direction	n/a

Once common recyclables and green waste are diverted from the trash, most of what remains is putrescibles, otherwise known as “food waste.” Landfills accept millions of pounds of food waste each year.

According to the US Department of Agriculture, Americans throw away more than 25 percent of the food prepared, about 96 billion pounds of food waste each year. Food waste includes uneaten food and food preparation scraps from residences or households, and commercial establishments like restaurants, grocery stores, and cafeterias. The food service industry estimates that 4% to 10% of food purchases become waste before ever reaching a guest.

Food waste diversion programs are quite common in Northern California; however few are found in Southern California due to the unavailability of food waste recycling centers. Issues such as permitting, space and costs have held back this important sector in recycling. According to Waste Management, food waste diversion will be a feasible option for their company in summer 2012. Right now it is simply too expensive and far to transport and process the food waste.

As part of the new solid waste agreement, Waste Management will perform a Residential and Commercial Food Waste Diversion Pilot Program for a minimum of ninety (90) days beginning July 1, 2012. Residential participants shall include one full residential route for one day each week and commercial participants shall include 10% of food waste generators in the City (restaurants, grocery, etc.). Upon conclusion of the pilot, Staff and Waste Management will return to City Council with baseline tonnage data and a summary of the program successes and challenges. Council may direct Staff at that time to negotiate a cost to continue the program with Waste Management.

Rates with Optional Services

ENHANCED BASIC rates with OPTIONAL SERVICES costs are summarized in Tables 6 and 7. The tables list the monthly impact of optional services on the rates and show the total monthly costs and percentage increase for each of the rate increases in January 2011, July 2011, and July 2012, as well as the total monthly increase and overall cost increases for three years. Because of their similarity, the BASIC rates with options are not included in this report.

Council is asked to give direction as to what options they wish to include in the final contract with Waste Management and to prepare proposed final rates in advance of the 218 process for rate adjustment.

Table 6:
Residential ENHANCED BASIC Rates PLUS Optional Services
 (\$Cost/Month)

Date	Current Flat Rate	January 1, 2011	July 1, 2011	July 1, 2012	Total Increase from Current
Residential Cart Size	n/a	\$Cost/%Inc	\$Cost/%Inc	\$Cost/%Inc	\$Cost/%Inc
35 gallon Cart	\$13.74	\$13.18	\$13.96	\$14.52	
HHW Door-to-Door	-----	\$0.51	\$0.54	\$0.56	
Recycle Ranger	-----	\$0.28	\$0.30	\$0.31	
Total	\$13.74	\$13.97 (1.7%)	\$14.80 (5.94%)	\$15.39 (4.0%)	\$1.65 (12.0%)
64 gallon Cart	\$13.74	\$15.06	\$15.96	\$16.60	
HHW Door-to-Door	-----	\$0.51	\$0.54	\$0.56	
Recycle Ranger	-----	\$0.32	\$0.34	\$0.35	
Total	\$13.74	\$15.89 (15.6%)	\$16.84 (5.98%)	\$17.51 (4.0%)	\$3.77 (27.4%)
96 gallon Cart	\$13.74	\$17.08	\$18.10	\$18.82	
HHW Door-to-Door	-----	\$0.51	\$0.54	\$0.56	
Recycle Ranger	-----	\$0.36	\$0.38	\$0.40	
Total	\$13.74	\$17.95 (30.6%)	\$19.02 (5.96%)	\$19.78 (4.0%)	\$6.04 (44.0%)

Table 7:
Commercial and Multi-Family ENHANCED BASIC Rates PLUS Optional Services
 (\$Cost/Month)

Date	Current Rate	January 1, 2011	July 1, 2011	July 1, 2012	Total Increase from Current
Commercial/Multi-Family	n/a	\$Cost/%Inc	\$Cost/%Inc	\$Cost/%Inc	
<u>1-32 gallon Cart/Can, 1x per week</u>	\$14.98	\$16.18	\$17.14	\$17.83	
Recycle Ranger	-----	\$0.34	\$0.36	\$0.37	
Total	\$14.98	\$16.55 (10.5%)	\$17.53 (5.92%)	\$18.24 (4.1%)	\$3.26 (21.8%)
<u>1-2 yard bin, 1x per week</u>	\$76.01	\$82.09	\$86.97	\$90.45	
Mixed Waste Processing	-----	\$9.85	\$10.44	\$10.86	
Recycle Ranger	-----	\$1.72	\$1.82	\$1.89	
Total	\$76.018	\$93.66 (23.2%)	\$99.23 (5.95%)	\$103.20 (4.0%)	\$27.19 (35.8%)

Rate Comparisons

Rate comparisons with other agencies are shown in Table 8. The comparison is based on rates from Fiscal Year 2009-2010 which began on July 1, 2009. Current Manhattan Beach residential rates rank tenth (10) lowest in Los Angeles County (highlighted in yellow).

Table 5 also includes placeholders with the proposed new tiered-rate costs for Manhattan Beach (highlighted in orange). *Although rates for other cities represent FY2009-10, Council may see generally where the new ranking(s) may fall.* For example, using a 65-gallon container rate, Manhattan Beach would rank thirteenth (13) against FY2009-10 rates.

Although rates may be compared, the array of services offered by each agency is more difficult to compare. On the basis of rate only, the proposed rates would be relatively competitive.

Table 8:
Comparison of Los Angeles County Cities with the (FY 2009-10) Lowest Residential Rates
 (Provided by HF&H)

	Current MB rank in "flat-rate structure"
	Proposed MB rank for each can size in "tiered-rate" structure

	CITY	SIZE OF REFUSE (gallons) IF FEE BASED ON SIZE	TOTAL MONTHLY RATE (as of July 2009)
1	Bell Gardens	Flat Rate	\$ 9.58
2	El Segundo	Flat Rate	\$ 10.41
3	Hermosa Beach	Flat Rate	\$ 11.47
4	Bradbury	65	\$ 12.38
5	Vernon	85	\$ 12.55
6	Downey	67	\$ 12.71
7	Irwindale	96	\$ 12.92
8	Inglewood	Flat Rate	\$ 13.17
	Manhattan Beach	35	\$ 13.18
9	West Hollywood	Flat Rate	\$ 13.61
	Manhattan Beach	Flat Rate	\$ 13.74
10	Signal Hill	Flat Rate	\$ 13.77
11	Redondo Beach	Flat Rate	\$ 14.06
12	La Puente	Flat Rate	\$ 14.84
13	Manhattan Beach	65	\$15.06
14	Hawaiian Gardens	96	\$ 15.11
15	Cerritos	Flat Rate	\$ 15.39
16	Gardena	64	\$ 15.39
17	South Gate	96	\$ 15.44
18	Lakewood	Flat Rate	\$ 15.77
19	Lawndale	Flat Rate	\$ 15.81
20	Monrovia	90	\$ 16.06
21	Lynwood	95	\$16.18
22	Paramount	Flat Rate	\$ 16.28
23	Compton	Flat Rate	\$ 16.48
24	Duarte	90	\$ 16.73
	Manhattan Beach	95	\$ 17.08
25	La Verne	64	\$ 17.32
26	Santa Clarita	96	\$ 17.33
27	Carson	Flat Rate	\$ 17.42
28	Whittier	Flat Rate	\$ 17.46
29	Bellflower	90	\$ 17.79
30	Glendale	100	\$ 17.81
31	Cudahy	Flat Rate	\$ 17.98
32	La Mirada	96	\$ 18.04
33	Long Beach	100	\$ 18.29
34	Rosemead	100	\$ 18.42
35	Arcadia	96	\$ 18.43
36	Maywood	Flat Rate	\$ 18.44
37	Commerce	Flat Rate	\$ 19.34
38	Norwalk	95	\$ 19.56
39	Santa Fe Springs	Flat Rate	\$ 19.56
40	Montebello	Flat Rate	\$ 19.82
41	Alhambra	96	\$ 19.97
42	Walnut	96	\$ 20.04
43	Palmdale	96	\$ 20.05
44	Pico Rivera	Flat Rate	\$ 20.30
45	Artesia	96	\$ 20.77
46	Lomita	96	\$ 21.00
47	Baldwin Park	64	\$ 21.67
48	Hawthorne	96	\$ 21.75
49	Huntington Park	Flat Rate	\$ 21.86
50	Torrance	Flat Rate	\$ 22.29

51	Azusa	Flat Rate	\$ 22.38
52	Monterey Park	Flat Rate	\$ 22.68
53	Calabasas	64	\$ 23.11
54	Lancaster	Flat Rate	\$ 23.55
55	El Monte	Flat Rate	\$ 23.93
56	Agoura Hills	64	\$ 24.01
57	Covina	90	\$ 24.22
58	Diamond Bar	96	\$ 25.23
59	Glendora	Flat Rate	\$ 25.23
60	Burbank	64	\$ 25.37
61	West Covina	90	\$ 25.75
62	Pomona	96	\$ 26.22
63	Bell	Flat Rate	\$ 26.48
64	Rancho Palos Verdes	Flat Rate	\$ 27.73
65	Temple City	90	\$ 27.74
66	San Gabriel	90	\$ 27.84
67	San Dimas	96	\$ 28.67
68	Claremont	90	\$ 29.63
69	Sierra Madre	90	\$ 29.95
70	Palos Verdes Estates	Flat Rate	\$ 33.01
71	South Pasadena	Flat Rate	\$ 34.80
72	Rolling Hills Estates	96	\$ 36.20
73	Los Angeles	Flat Rate	\$ 36.32
74	Pasadena	100	\$ 36.43
75	Malibu	96	\$ 36.50
76	San Marino	Flat Rate	\$ 37.26
77	Santa Monica	96	\$ 39.90
78	Avalon	Flat Rate	\$ 45.25
79	Hidden Hills	96	\$ 60.99
80	Rolling Hills	Flat Rate	\$ 87.00
81	Beverly Hills	Charge based on lot size	
82	Culver City		
83	Industry	City did not provide information	
84	San Fernando		
85	South El Monte		
86	Westlake Village	City does not regulate rates with exclusive hauler	
87	La Canada Flintridge		
88	La Habra Heights	City does not regulate rates with multiple permitted haulers	

Request for Proposal Process

Because the refuse contract is the largest contract the City of Manhattan Beach holds, and without a competitive bid process there is no guarantee the Waste Management proposal represents the lowest cost, an RFP process remains a valid option for Council consideration. In addition to cost, quality of service is also important and Staff recommends that the proposal be evaluated on both cost and quality of service.

If City Council chooses to reject the Waste Management negotiation package and pursue the Request for Proposal Process, it is necessary to start the RFP process to ensure the completion of the process by the current contract expiration date of April 30, 2011. If Council selects the RFP process, Staff recommends that Council direct the City Manager to enter into a Professional Services Contract with HF&H Consultants, LLC to carry out the RFP Process. The contract for HF&H Consultants, LLC RFP services is \$105,000. Attachment B shows the HF&H RFP Work Plan and break down of costs for Professional Services.

Next Steps

Timelines for continuation of the process are shown in Tables 9 and 10 for either option the Council selects, Renegotiation Process or Request for Proposal (RFP) Process.

RENEGOTIATION PROCESS

Table 9:
Renegotiation Process Timeline

Activity	Date
1. Council consideration/approval of renegotiated agreement & optional services, adopt proposed rates	<ul style="list-style-type: none"> • April 6, 2010
2. 218 Process Public Hearing/Consideration of Rate Adoption	<ul style="list-style-type: none"> • June 15 - August 3, 2010
3. Cart size selection	<ul style="list-style-type: none"> • By November 1, 2010
4. Cart distribution to Sand Section and for existing cart customers requesting exchanges	<ul style="list-style-type: none"> • By December 31, 2010
5. New customer rates implemented	<ul style="list-style-type: none"> • January 1, 2011

Implications of Schedule

Because of the time needed to complete the review of the Administrative Fee, establish rates, and begin the 218 process, implementation of the new customer rates cannot be completed by October 1, 2010. Therefore, the City will adjust fees in accordance with the new contract with Waste Management without a corresponding rate adjustment to the customer for the time period between October 1, 2010 and December 31, 2010. The deficit (approximately \$70,000) will be covered by funds from the City’s Refuse Fund reserves. If the 218 protest succeeds (i.e. no rate adjustment), then Contract language allows the City to terminate the new Waste Management Franchise Agreement upon 30 days notice. The City may choose to keep the contract in place, paying the rate increase from the City’s Refuse Fund until the City has made alternative arrangements to provide service.

REQUEST FOR PROPOSAL (RFP) PROCESS

Table 10:
RFP Timeline

Activity	Date
1. City Council to direct City Manager to hire a consultant for RFP services	<ul style="list-style-type: none"> April 6, 2010
2. RFP created and call for proposals	<ul style="list-style-type: none"> July 2010
3. Proposals due	<ul style="list-style-type: none"> September 2010
4. Proposal evaluation	<ul style="list-style-type: none"> September/October 2010
5. Contract negotiations	<ul style="list-style-type: none"> November 2010
3. Award contract and begin transition	<ul style="list-style-type: none"> December 7, 2010
4. New waste hauler contract & service begins	<ul style="list-style-type: none"> May 1, 2011

An abbreviated pro's/con's summary of the two options is offered for consideration in Table 11.

Table 11:
Pro's & Con's of RFP and Renegotiation Processes

Request for Proposal (RFP)		Renegotiation of Current Contract	
Pro	Guaranteed competitive pricing.	Pro	Allows City to work with hauler who has successfully provided services.
Pro	Best method if introducing programs new to the City or industry.	Pro	Existing contractor knows City's customers' needs and demands.
Pro	Different haulers may have ideas and improvements for current operations	Pro	Transition to provide additional services would be minimal.
		Pro	Through negotiations it is known what additional services may be added.
Con	New haulers abilities are based on references; not current City experience.	Con	It is difficult to establish lowest rates or conduct rate comparisons with neighboring agencies because of different service levels.
Con	Selection process includes subjective components of quality of service in addition to service costs.	Con	Cost basis for new programs established in non-competitive basis.
Con	Transition challenges if new contractor is selected.	Con	Does not allow potentially interested parties to bid on contract.

Staff recommends that the City Council discuss and provide direction to either:

1. Approve the negotiated franchise agreement with Waste Management.
And if Recommendation #1 is chosen,
2. Direct Staff as to “basic” or “enhanced basic” franchise agreement, and optional programs.

Or

3. Seek a Request for Proposal (RFP) for waste hauling services to begin after April 30, 2011, when the current Waste Management contract expires.
And if Recommendation #3 is chosen,
4. Authorize the City Manager to negotiate a Professional Services Agreement with HF&H Consultants, LLC to assist the City with completing the RFP process.

Attachments:

- (A) City of Manhattan Beach Franchise Agreement with Waste Management
- (B) HF&H Consultants, LLC Request for Proposal Work Plan

cc: Laith Ezzet, HF&H Consultants, LLC
Susan Moulton, Waste Management
Bruce Moe, City of Manhattan Beach Finance Director

FINAL

FRANCHISE

AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

USA Waste of California, Inc.

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

* * *

April 2, 2010

DRAFT

FRANCHISE
AGREEMENT
BETWEEN
CITY OF MANHATTAN BEACH
AND
USA WASTE OF CALIFORNIA, INC.
FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

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RECITALS

This Franchise Agreement (Agreement) is entered into this ___ day of _____, 2010, by and between the City of Manhattan Beach (City) and USA Waste of California, Inc. (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, the current Solid Waste Franchise agreement between City and Company was to expire on April 30, 2011; and,

WHEREAS, the City and Company have agreed to implement programs in advance of expiration of the current Agreement and for this Agreement to supersede the prior Agreement as of October 1, 2010; and, WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 5.24 of the Manhattan Beach City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.1A Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Green Waste, to be Collected by Company pursuant to Section 3.6.3.

1.2 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. 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 Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.3A Bagster® Bag

"Bagster® Bag" means a soft-sided polypropylene Container that can hold up to 3,000 pounds of Solid Waste, is purchased by the Customer at a local hardware or home supply store, and is Collected by Company using a special vehicle with an overhead crane.

1.3B Bagster® Service

"Bagster® Service" means a method for Residential or Commercial and Industrial Customers to arrange for Collection of Solid Waste as an alternative to temporary Bin or temporary Rolloff Box service, using a Bagster® bag. Company will provide for Collection/processing of the Bagster® bag. Bagster® Service is a Temporary Service. The rate for Bagster® Service shall be a reasonable rate negotiated between the Customer and Company.

1.4 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

1.5 Bin

“Bin” means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

1.6 Bulky Waste

“Bulky Waste” means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); Electronic Waste (including stereos, televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.19A); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.7 Can

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

1.8 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 30 and no greater than 101-gallons.

1.9 City

"City" means the City of Manhattan Beach, a 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.

1.10 Collect/Collection

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

1.11 Commercial and Industrial

"Commercial and Industrial" refers to property, or Owners of property, upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.12 Company

"Company" means USA Waste of California, Inc., a Delaware corporation and its officers, directors, employees, agents, companies and subcontractors.

1.13 Section Deleted

1.14 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.14A Complaint

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.14B Composting

"Composting" means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

1.15 Construction and Demolition Waste

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

1.16 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

1.17 Customer

"Customer" means the Person having the care and control of any Premises in the City receiving Solid Waste Collection service from the Company.

1.18 Disposal

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

1.19 Disposal Site(s)

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

1.19A Electronic Waste or E-Waste

"Electronic Waste" or "E-Waste" means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

1.20 Environmental Laws

"Environmental Laws" means all federal and State statutes, county, local and the 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 Toxic Substances Control 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.

1.21 Facility

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

1.22 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

1.22A Food Waste

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste pilot programs included in Sections 3.2.7 and 3.2.8, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,
- Tea bags, coffee grounds and filters.

1.23 Green Waste

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

1.24 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 *et seq.* (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, *et seq.*; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 *et seq.*; (iv) the Clean Water Act, 33 USC §1251 *et seq.*; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 *et seq.*; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.25 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 *et seq.*), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.26 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

1.27 Materials Recovery Facility

“Materials Recovery Facility” means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

1.28 Mixed Waste Processing

“Mixed Waste Processing” means the separation and sorting of recyclables and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

1.29 Multi-Family

"Multi-Family" means pertaining to any Residential Property with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

1.29A Non-City Sponsored Events

“Non-City Sponsored Events” means periodic events (one-time, annual or occasional, but not year-round) not covered by Section 3.6.5.

1.30 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.31 Permanent Rolloff Box Service

“Permanent Rolloff Box Service” means the Collection of Solid Waste generated from ongoing operations at a Customer’s place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premise that would otherwise be Collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.32 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, town, city, or special purpose district.

1.33 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.34 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.35 Rate Year

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.36 Recycling

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.37 Recyclable Materials

"Recyclable Materials" means Residential, Commercial or Industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.38 Refuse

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.39 Residential

"Residential" refers to property, or Owners of property, which is used for Residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.40 Rolloff Box

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

1.40A Sand Section

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

1.41 Single-Family

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

1.42 Solid Waste

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.43 State

"State" means the State of California.

1.44 Temporary Service

"Temporary Service" means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a

Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business' ongoing operations is not included.

1.45 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

1.46 Universal Waste

"Universal Waste" means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Ten Thousand dollars (\$110,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

2.3 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

2.4 Effective Date

The effective date of this Agreement shall be _____ ("effective date").

2.5 Term of Agreement

The term of this Agreement shall commence on October 1st, 2010, and expire on June 30th, 2017, with a 12-month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to 12-months unless City gives Company a 30-day written notice of termination.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) Effectiveness of the City Council Action. The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Proposition 218

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of Article XIID of the California Constitution. City agrees to undertake the notice and

protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIIC, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement City shall have the option to terminate this agreement with thirty days advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

2.9 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;
- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Roll-Off Box and Bin service provided at Non-City sponsored Special Events;

- e) Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- f) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- g) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- l) Collection using Customer-provided Containers for one-time accumulation of material, and removal of Container for Disposal/processing. This exclusion is intended to include programs providing alternative methods of temporary Collection service that exclude the use of Bins, such as Company's Bagster® program as defined in Sections 1.3A and 1.3B. This exclusion is not intended to permit an alternative to permanent Refuse Collection service;
- m) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- n) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9, including Recyclable Materials, without seeking or obtaining approval of the Company under this Agreement. City may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Green Waste from City landscaping maintenance operations, contract services, “niche” Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

The City may direct the Company 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 that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the 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 of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- 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.

2.10.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services. In the event that City exercises its right to permit third party Persons to provide such services, and if such a decision reduces or eliminates Company's Collection services as contemplated under Article 3 of this Agreement, Company agrees that rates paid to Company will be reduced proportionately.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply

to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

2.12 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.13 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (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 the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.15 Business License

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

The work to be done by the Company 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 the Company 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 the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

3.1.1 Residential Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement.

By January 1, 2011, Company will supply each Customer with Refuse Carts of 96- 64- or 32-gallons, as requested by Customer. Beginning January 1, 2011, Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service. Company may continue providing manual service to Customers in the Sand District prior to January 1, 2011.

3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Contractor shall Collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge. Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 2 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Contractor shall Collect all additional Refuse placed out for Collection in the Residential Customer's own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.6 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

Company shall provide Bin service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family, Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located.

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3.2 Commercial Cart or Can Service

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

3.1.4 Rolloff Box Service

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 2.

3.1.5 On-Call Bulky Waste Pickup

Company shall provide Bulky Waste pickup service to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day. However, the Company will Collect Bulky Items set out for Collection on Collection day at Residential Premises, even if the Customer has not notified the Company in advance.

Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)
- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

3.1.5.1 Single and Multi-Family Customers

Single and Multi-Family Customers, whether Bin, or Cart Customers, are entitled to three Bulky Waste pickups per dwelling unit per year at no additional charge, with

additional pickups Billed in accordance with the approved rate schedule in Exhibit 2. Customers may place up to three (3) items out for Collection per pick-up.

3.1.5.2 Commercial Customers

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 2, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

3.1.6 Commercial Container Overflow Procedures

Bin and Commercial Cart and Can Customers that regularly produce more Solid Waste 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 Container, Company 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 the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period - Upon the second event of an overfilled Container 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 will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period - Upon the third event of an overfilled Container 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 documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

Container Overage Fee - If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts. By January 1, 2011, Company shall offer 96-, 64- and 32-gallon Recycling Carts to all Customers. Prior to January 1, 2011, Company may continue to provide manual service to Customers in the Sand Section. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection. Automated service must be implemented City-wide by the start of service under this Agreement.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

3.2.2 Commercial Recycling

The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers

in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$27,000 on July 1, 2010 as required under the previous agreement for the City to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City’s Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
July 1 st , 2011	\$28,000	July 1 st , 2015	\$32,000
July 1 st , 2012	\$29,000	July 1 st , 2016	\$33,000
July 1 st , 2013	\$30,000	July 1 st , 2017*	\$34,000
July 1 st , 2014	\$31,000		

* If City exercises option to extend Agreement to or through July 1st 2017, payment will be prorated based upon the proportion of the 12-month extension granted, up to \$34,000 if extended to June 30, 2018.

3.2.4 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent Construction and Demolition Waste that is suitable for Recycling from being taken to the landfill by:

- Following the City's Construction and Demolition Debris Diversion requirements of the Municipal Code, to the extent applicable to Company;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where it will be processed for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,
- Contacting contractors on a list provided by the City on a regular basis to educate them on Construction and Demolition Waste diversion.

3.2.5 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials.

3.2.6 Universal Waste

Company shall instruct Customers not to set out universal waste for Collection except through programs included in this Agreement specifically tailored for the Collection of such items, including SHARPS Collection programs, Bulky Waste Collection, or the optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green waste, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

3.2.7 Residential Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Residential Cart Customers. Program shall be subject to City approval. Company shall conduct the approved Residential food waste pilot program at no additional cost to City or ratepayers, beginning July 1, 2012 (unless start date is extended by City).

Pilot program shall be conducted for a minimum of ninety (90) days. Participants shall include one full Residential route for one day each week.

Company shall collect baseline tonnage data from this route for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.2.8 Commercial Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Commercial Food Waste generating Customers. Program shall be subject to City approval. Company shall implement a Commercial Food Waste pilot program for a minimum of ninety days beginning July 1, 2012 (unless start date is extended by City) for 10% of Food Waste generating Commercial Customers in the City at no additional cost to either City, participants or rate payers.

Prior to the start of the pilot program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Refuse capacity prior to the start of the pilot. . Company collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program.

Company shall, at a minimum, report the quantity of food waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Commercial food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.3 Green Waste Program

3.3.1 Residential Green Waste Collection

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. By January 1, 2011, Company shall issue each Green Waste Customer one 96-, 64- or 32-gallon Green Waste Cart. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge. Prior to January 1, 2011, Company may continue to provide manual service to Customers in the Sand Section. Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and twenty-four (24) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service at a rate equal to 50% of the comparable Refuse rate for the same size Container and frequency of service.

3.3.2 Rolloff Box Service

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.3 Holiday Tree Collection Program

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than seven (7) feet, be free of ornaments, garlands, and tinsel, and stands must be removed. Trees shall be diverted from Disposal.

3.3.4 End Uses for Green Waste

Company shall divert Green Waste materials from Disposal. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by the California Integrated Waste Management Board.

3.3.5 Compost Bin Distribution

Company shall purchase composting bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill Customer a co-pay amount to be determined by City. The difference between the amount billed to the Customer and the actual cost of the bin to the Company (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 of compost bins to be distributed.

Company shall develop a public education flyer for this program and provide it to City for distribution. Company shall conduct three annual, one-hour composting classes, in May, July and October of each year.

3.4 Warning Notice

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after two sequential written warnings, the Container continues to be contaminated, the Company may remove the Recycling or Green Waste Container from Customers who

fail to sort properly and segregate Recyclable Materials or Green Waste. The Company shall report monthly to the City any warning notices issued.

3.5 Commercial Mixed Waste Processing

Company shall send a minimum of 2,730 tons of Bin and Commercial Cart or Can Refuse it Collects on an annual, calendar basis for processing to recover Recyclables. The annual tonnage requirement shall be pro-rated for October 1 through December 31, 2010. Company shall ensure at least a 50% recovery (at least 1,365 tons) of Recyclables from this processing or will process a sufficient number of additional tons to recover 1,365 tons. This program shall be conducted at no additional cost to City or rate payers.

3.6 City Services

3.6.1 City Facilities Collection

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, parks, street maintenance operations, and Street Litter Containers (see Section 3.6.4 below). Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required.

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly dispose of hazardous waste that is generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 9. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

3.6.4 Street Litter Containers

Company shall Collect and dispose of all Solid Waste deposited in City's Street Litter Containers as necessary to prevent overflow at no additional cost at all existing locations to be identified and documented by City and Company within sixty (60) days of the execution of this Agreement. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street litter Refuse Containers to be Collected at no additional charge may be increased during the term at an amount proportional to the growth in real overall Customer rate revenues.

3.6.5 City Sponsored Events

The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. This shall include providing Containers to Collect and Dispose of all Solid Waste, using both waste boxes and Bins, and providing Containers to Collect source-separated Recyclables. City shall also direct Company to provide Roll-Off Boxes and service sixty-three (63) Rolloff Boxes pulls per calendar year for select City events. City shall instruct Company at which events these Rolloff Box pulls will be used. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 7.

3.6.6 Emergency Collection and Disposal Service

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave [tsunami], riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 2. The rate for this service is to remain fixed for the term of the Agreement.

3.6.7 Sharps Collection Program

Company shall arrange for Sharps containers to be delivered directly to requesting Residential Customers, both Single and Multi-Family. Each individual resident may receive up to three containers per year. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program

in Exhibit 9, Company may alternatively arrange for door-to-door Collection of such containers through this program. "Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program. This program will be provided at no additional charge to City or Customers and shall be operational within 30 days of the execution of this Agreement. This mail-back Sharps program may be supplemented by a community-based program that includes free drop-off locations in the City.

3.7 Containers

3.7.1 Carts

3.7.1.1 Initial Residential Cart Distribution

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers, including Customers with existing Carts and Customers in the Sand Section that will receive Carts and begin automated Collection under this Agreement. Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered or retained. Company shall deliver or adjust the Carts received or retained by each Customer. If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons. If existing automated Customers do not respond, Company may make no change and charge Customer based upon Carts currently in distribution. Carts will be fully distributed to the Sand Section prior to January 1, 2011.

Customers with existing automated service may request one Cart exchange at no charge within 90 days after the initial distribution/exchanges based upon mailed Customer responses. Sand Section Customers, and other Customers after one exchange, may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types may be exchanged.

Company may continue to use Carts distributed to Residential Customers prior to the start of service under this Agreement, provided the Carts meet all Agreement requirements. Company may distribute new or refurbished Carts, subject to City's approval of Carts and provided the Carts meet all requirements of this Agreement, including quality and uniformity of color.

3.7.1.2 Removal of Existing Cans from Sand Section

Upon and after distributing Carts to the newly automated Sand Section, Company shall remove, and Recycle to the extent possible before Disposing, Company-provided and Customer-provided Cans, if Customer does not intend to retain the Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected.

3.7.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

3.7.1.4 Capacity

The Company shall provide Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

3.7.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

3.7.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

3.7.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be black, brown or gray. Recycling Carts will be blue. Green Waste Carts will be green.

3.7.1.8 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Carts. An arrow (at least 3 inches by 5 inches) hot stamped in white color shall be placed on the lid, indicating the direction of Cart placement.

In character size of no less than 3/16 inch, the phrase:

PLACE CONTAINER WITH ARROW FACING

STREET FOR COLLECTION

COLOQUE EL RECIPIENTE CON LAS FLECHAS

HACIA LA CALLE

Additionally, the **REFUSE, RECYCLING** or **GREENWASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English and Spanish, with graphics, and shall place labels on all Carts delivered to Customers, including newly delivered Carts in the Sand Section, Carts delivered to new Customers, extra Cart requests, and replacements of damaged or stolen Carts. Existing Carts in service at Customer locations shall only be provided with new labels upon Customer request.

3.7.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

3.7.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70

3.7.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

3.7.2.4 Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

3.7.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

3.7.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

3.7.3 Can Design and Performance Requirements

The Cans shall be manufactured by injection or rotational molding and meet the Can design and performance requirements as specified below. All Cans selected shall be subject to City approval.

3.7.3.1 Capacity

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-

gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

3.7.3.2 Can Handles

The Can handles will provide comfortable gripping area for carrying the Can.

3.7.3.3 Can Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

3.7.3.4 Can Colors

The Commercial Refuse Cans and the Residential and Commercial Recycling and Residential Green Waste (if applicable) Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Commercial Refuse Cans will be black, brown or gray. Recycling Cans will be blue. Green Waste Cans will be green.

3.7.3.5 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Cans. For Residential Containers, **RECYCLING** or **GREENWASTE** must be hot stamped in white color on the side of the Can in character size of no less than one inch.

Commercial Refuse Cans shall be labeled to identify the Customer's address and days of the week that the Can is to be Collected. Markings may be made by hot stamping, applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

3.7.3.6 Can Load Capacity

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

3.7.3.7 Can Durability

Cans shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.3.8 Chemical Resistant

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

3.7.3.9 Reparability or Replacement

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

3.7.4 Cart and Can Ownership and Maintenance Responsibilities

The Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can. All Carts and Cans previously distributed to Customers or provided under this Contract shall remain the property of Company.

3.7.5 Bins and Compactors

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings at \$35 per cleaning. Company shall remove graffiti at no

additional charge from any Container within twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

3.7.6 Rolloff Boxes

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.8 Diversion Requirements

The minimum amount that shall be diverted through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation is 50% of the waste Collected during each year of this Agreement. Diversion achieved by Transformation shall consist of a maximum of 10% of the waste Collected. Should the City not reach the AB 939 50% diversion goal for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake reasonable efforts to implement programs and provide equipment necessary in order for the City to meet the 50% diversion goal.

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 P.M and 7:30 A.M. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. Company shall adjust the early morning

start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

3.9.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) years old. Company may submit a written request to City, subject to approval at the City Manager's unfettered discretion, to retain a vehicle in use in the City beyond 10 years. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG). Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including SCAQMD Rule 1193, and the Air Resource Board's proposed new emission standards for Refuse removal vehicles, as well as rules or regulations not yet proposed. No rate adjustments shall be made for

such changes in law. All vehicles used by the Company in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its 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) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every two years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all

vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.

- 5) The Company 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. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether

or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

- 4) Company shall consider implementing evolving technology, such as GPS for vehicle tracking.

F. City Inspection Per Code. The 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 applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, 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, which decision shall be final.

3.9.3 Litter Abatement

A. Minimization of Spills. The Company 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 are spilled during Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the

storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company 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 the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

3.9.4 Personnel

The Company 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company'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.

The Company 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. The Company 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, the Company shall take all necessary corrective measures including,

but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company 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.

3.9.5 Identification Required

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

3.9.6 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

3.9.8 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

3.10 Transportation, Disposal and Processing

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Site shall be the El Sobrante Landfill. The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. In the event that City selects a Disposal Site or other Facility, the City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a significant change in tip fee or transportation costs.

3.11 Status of Disposal Site

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

3.12 Annual Route Audit

Once during the first year and every other year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in the City. The annual route audit information shall include, at 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);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

- Route Number;
- Truck Number;
- Account Name;

- Account Number;
- Account Service Address;
- Whether each individual address is Commercial or Multi-Family;
- Number of Residential Dwelling units at each Multi-Family account;
- Service Level per Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted to the Public Works Director and one to the City's billing manager. This summary shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total (Residential Cart, Multi-Family Bin, and Commercial);
- Types of billing and service exceptions observed;
- Number of billing and service exceptions by type;
- Total monthly billing, pre-audit;
- Total monthly billing, post-audit (subsequent to corrections of identified exceptions; and,
- Percentage of billing and service exceptions:
 - Percentage of the number of accounts with errors to the total number of accounts served;
 - Percentage of the "net" change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
 - Percentage of the "absolute" change in net monthly billing as a result of the audit to the total "pre-audit" monthly billing.

The report shall include a description of the procedures followed to complete the annual 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. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company's plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

3.13 Service Exceptions; Hazardous Waste Notifications

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

B. Hazardous Waste Inspection and Reporting. The Company reserves the right and has the duty under law 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. The Company 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 the City. In addition to other required notifications, if the Company observes any substances that 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, the Company will immediately notify the Public Works Director or the Public Works Director's designee.

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

3.14 Hazardous Waste Management Component

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

ARTICLE 4
OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services in subsections A and B below.

A. Compost Bin Co-Pay. The Residential Customers' co-pay for compost bins shall be billed by the Company.

B. Rolloff Box and Temporary Bin Services. In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

4.1.2 City Billing

City shall perform all billing under this contract, other than Rolloff Box service, temporary Bin service, and compost bin co-pays. City reserves the right to direct Company at any time during the Agreement Term to charge Customers for periodic charges such as Bulky Waste pickups, Cart overage pickups, and Bin Container Overage Fees.

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of the City billing Customers. Payment will be based on services rendered and will be subject to

subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see 4.1.4 below).

4.1.4 Extra Cart Revenue

City shall retain all rate revenue received from Residential Customers' subscriptions for extra Refuse Carts to offset a portion of the City administrative costs under this Agreement. City will establish and bill Customer rates to Single Family Residential Customers for extra Refuse Carts at no less than \$2.00 per Refuse Cart per month below the Company Compensation rate for the first Refuse Cart of the same size.

In the event a Customer requests multiple smaller Carts in place of one larger Cart due to space constraints at the property or Customer's physical limitations to move Carts, City may charge Customer, and pay Contractor, based upon the standard rate for service based upon the single Cart rate for equivalent Container capacity. For example, usage of two 32-gallon Carts in place of one 64-gallon Cart would result in Contractor Compensation at the 64-gallon standard rate with no extra Refuse Cart charge for such Customer.

4.1.5 Company Responsible for Service Level Accuracy

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt. Failure to notify the City in writing within 45 days shall confirm the Company's approval and acceptance of the payment amount.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

4.1.6 Review of Billings

The Company shall review its Billings to customers under Section 4.1.2. The purpose of the review is to determine that the amount which the Company is billing each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to

the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.7 Suspension of Service Due to Non-Payment

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.8 Franchise Fee

A. Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes Billing of permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

B. Time and Method of Payment

Company shall remit the Franchise Fee payments on or before the thirtieth (30th) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30th) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal

to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs), and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

4.1.9 Company Compensation Rates For Single Unit Homes From October 1, 2010 to December 31, 2010

City shall compensate Company for single unit homes based on a flat monthly rate per Customer from October 1, 2010 to December 31, 2010 as shown in Exhibit 2. Beginning January 1, 2011, City shall pay Company for single unit homes based upon the size of the Refuse Cart.

4.1.10 City Rates to Customers

Note that Company compensation rates in Exhibit 2 to be paid by City to Company beginning October 1, 2010 represent an increase over compensation paid under the previous contract. City may elect not to increase corresponding rates to Customers until January 1, 2011; however, Company shall still be compensated by City in accordance with Exhibit 2.

4.2 Customer Service

4.2.1 Office Hours

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and number of representatives shall be adequate to handle the volume of calls typically experienced on

the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

4.2.3 Complaint Documentation

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four (24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular

Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

4.2.4 Resolution of Customer Complaints

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

4.2.5 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints. City shall have the right to approve the Company's choice for a liaison.

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Recycles Solid Waste Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Manhattan Beach Recycles Solid Waste program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and Recycling Solid Waste. The Company will provide and distribute literature in the form of fliers, cards, stickers, magnets or other methods acceptable to the City. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 1 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

- **Initial Mailing** – At least 30 days prior to October 1, 2010, Company will prepare and mail, using City-provided labels, an initial mailing to Customers explaining the transition from the existing programs to the new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information.
- **Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an “e-book” or “e-magazine” format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.
- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and distributed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract is in effect, using City-provided mailing labels.

- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City’s request and with City’s review and approval of the materials. Notices will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners’ associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City.

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed, and may also display Commercial Cans that are in use where Carts could not be

accommodated. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Solid Waste diversion or Recycling program.

4.3.5 Use of "Manhattan Beach Recycles" Program Name

The program name "Manhattan Beach Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. Company may use "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

Company shall provide in-unit Recycling Containers to each Multi-Family Customer Dwelling Unit upon request of individual Dwelling Unit, property owner or manager. Company will provide all property managers and Residents with Bin service with Recycling program guidelines, posters and other outreach materials tailored to Multi-Family Bin Customer service. Company shall contact each Multi-Family Customer building owner or property manager by September 30, 2011 in an effort to implement recycling programs, provide educational materials, and to train owner/manager in how to work with tenants to Recycle.

4.3.7 Commercial Outreach Recognition Program

Green Business Certification Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses in the community. Company will develop a comprehensive program to promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located in the City and complete a two page application and self assessment information about waste reduction practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with a “Green Business” certificate.

Green Works - Promoting Recycling at the Work Place

Company will provide businesses with prizes such as reusable water bottles, reusable grocery bags, and/or other incentives for managers to provide to employees who contribute to the business’ green program.

Company will provide business managers with promotional information, flyers and instructional posters to implement a comprehensive recycling program.

Company shall provide initial and on-going consultation and support to businesses who request it to ensure long term success of their business’ recycling program.

4.3.8 School Recycling Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District and private schools, to promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative recycling containers provided or replaced as needed. New Recycling Bins were provided in 2008;
- Conduct a minimum of one assembly promoting recycling at each school in the City each year;
- Education and training on proper recycling and waste reduction techniques to students and teachers;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program;
- Proper signage for all school sites;
- Provide teachers with sample lesson plans and activity sheets on relevant topics on an as requested basis; and,
- Contact each school at least once per year to offer all services included in this section. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at

schools, Company shall make an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management, janitorial staff, faculty and student volunteers to ensure that improved recycling and waste reduction techniques have been implemented.

4.3.9 Recycling Facility Tours

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis.

ARTICLE 5

COMPANY COMPENSATION AND RATES

5.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time. The City and the Company agree that the Company shall retain any proceeds from the sale of Recyclable Materials.

5.2 Initial Rates

The Company Compensation from October 1, 2010 through June 30, 2011 shall not exceed those set forth in Exhibit 2, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 2 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 2, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

A July 1, 2010 rate adjustment shall not be granted under the prior Agreement.

As of July 1, 2011, all Company Compensation for all rate categories will increase by 5.95%.

As of July 1, 2012, all Company Compensation for all rate categories will increase by 4.00%.

Beginning with the Rate Year commencing on July 1, 2013, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 2, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year. The City may decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline.

The rate adjustments shall apply to the Contractor Compensation rates included in Exhibit 2. The Contractor Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

5.4 Method of Adjustments

5.4.1 General

Pursuant to Section 5.3, the Company is entitled to the rate adjustments specified as of July 1, 2011 and July 1, 2012. For Rate Years beginning July 1, 2013, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 2 according to the method described below and the formulas shown in Exhibit 3, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

5.4.2 Cost Components for Rate Adjustment Indices

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor</u>
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	31.1%	48.4%	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 (January 1st) under the Agreement between local haulers and Package and General Utility Drivers Local Union 396, International (1)
Fuel	4.5%	6.9%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Transfer Vehicle Fuel	2.3%	3.6%	Fuels and related products and power, #2 Diesel Fuel (natural gas index above to be used upon conversion of transfer vehicles to natural gas)
Equipment	12.9%	20.0%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal	33.4%	N/A	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Transformation	2.3%	N/A	Actual change in the per ton gate rate at the waste-to-energy facility approved for use
All Other	13.5%	21.1%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100.0%	100.0%	

(1) As an example, under the agreement terminating September 30, 2012, these rates are:

Date of Wage Adjustment in Contract (last adjustment prior to each July 1)	4/01/10	4/01/11	4/01/12
Hourly Rate - Used as Old and New Indices in Columns A and B of Exhibits 3A and 3B	\$20.15	\$20.80	\$21.80
Rate Adjustment Date (for example only, as first relevant rate adjustment is 7/1/13)	n/a	7/01/11	7/01/12
Change to Labor Component - Calculated in Column C of Exhibits 3A and 3B	n/a	3.2%	4.8%

Comparable rates from subsequent labor agreements will similarly apply. If a subsequent labor contract has not been executed prior to a 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 compensation adjustment shall be provided for prior periods.

5.4.3 Rate Adjustment Steps

Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 3A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI, less food and energy) will be the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 3C).

Step Two - The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 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.

Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (the average annual change in the CPI, less food and energy). See Exhibit 3B.

5.5 Extraordinary Adjustments

The Company may not request an adjustment in Company Compensation other than the adjustments permitted under Section 5.3. Company is expected to comply with SCAQMD Rule 1193, and the Air Resource Board's proposed new emission standards for Refuse removal vehicles, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations.

City will permit an adjustment to the Disposal Component of the rate based on an increase or decrease in a direct per ton surcharge assessed at the disposal site by Federal, State or local regulatory agencies after the effective date of this Agreement, to the extent these adjustments exceed the cumulative Disposal component adjustments granted under Section 5.3 (the change in the Consumer Price Index for All Urban Consumers CUUR0000SA0L1E, all items less food and energy index – U.S. city average, as applied to the Disposal cost component beginning with the July 1, 2013 rate adjustment). City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

5.6 Grants

From time to time, federal, State, or local agencies including the City may provide to the Company grants to assist in financing qualified programs provided by the Company. The Company agrees that the Company Compensation, calculated as described in Sections 5.2 through 5.5, shall be reduced by the amount of any such grant, unless the grant is used exclusively to pay for new services. The Carl Moyer grant program shall be excluded from the provisions of this paragraph. The City Council shall determine

whether the reduction in the Company Compensation shall be: (1) passed through to those Customers designated by the City as a reduction to their rates; (2) as an offset to a rate increase calculated in accordance with Sections 5.2 through 5.5; (3) paid to the City for use as the City directs; or, (4) applied in any combination of (1) through (3).

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to meet the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.
- c) Results of the most recent route audit as described in Section 3.12.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results, feasibility of providing new services, application of new technologies, Customer

complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

The Company 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, the Company agrees to conduct data Collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. 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 the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

7.2.3 Solid Waste Service Records

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for limited services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick ups;
- f) Number of Refuse, Recycling, and Green Waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

7.2.4 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

7.2.5 Disposal Records

The Company shall maintain records of Disposal of all Solid Waste Collected in the City for the period of this Agreement and all extensions to this Agreement or successor Agreements. In the event the Company discontinues providing Solid Waste services to the City, the Company shall provide all records of Disposal or processing of all Solid Waste Collected in the City within thirty (30) days of discontinuing service. Records shall be in chronological and organized form and readily and easily interpreted.

7.2.6 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.

7.2.7 Cost of Audit

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, the Company shall, in addition to any other remedy City might have, pay for the full cost of the City's audit, not-to-exceed \$58,500 in 2010 dollars, and adjusted annually for changes in the Consumer Price Index for all Urban Consumers, all items less food and energy index, U.S. city average.

7.2.8 Payments and Refunds

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

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 efficiency of operations;
- b) Evaluate past and expected progress towards achieving AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

Public Works Director (or designated representative)
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste) and type of Customer (Residential, Commercial/Industrial Bin and Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.
- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.

- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.

7.3.3 Quarterly Reports

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated companies, and of other entities that may perform services under this Agreement, as the City may request.
- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
- f) Number of routes and route hours per day by type of service.

7.3.5 Financial Report

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing the Company'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 supplemental combining schedule may be audited, reviewed, or compiled, as determined by City. 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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

7.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company 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 the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

7.5 Right to Inspect Records

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, 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) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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 or active negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, including Waste Management, Inc. and its subsidiaries, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by the California Integrated Waste Management Board if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement.

Company’s indemnification of the City is subject to all of the following restrictions:

- a. The Company’s obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et. seq.* of the Public Resources Code.
- b. No payment required under the company’s obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company’s breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company’s breach or non-compliance resulted from City’s action

or failure to act, determined as a result of judicial review, hearing or appeal to the California Integrated Waste Management Board.

8.4 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a) The City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
 - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
 - d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. The Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

8.5 Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-:VII, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 5, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to

cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the 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, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.7 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

8.8 Pavement Damage

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

9.5 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company 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 Company is entered.
- E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand,

with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company 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.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company 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.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given forty-eight (48) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period.

10.2 Criminal Activity of Company

Should the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct

related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Contractor has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty and any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain. If the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. The City finds, and the Company 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 the City as a result of a breach by the

Company of its 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) the services provided under 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 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 Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the 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.

Company _____ City _____
Initial Here _____ Initial Here _____

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

1. **Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five (5) such failures annually: \$ 50.00
- c) For each failure to Collect Solid Waste, which has been properly set out for Collection, from an established Customer account, or accounts, on the scheduled Collection day and not Collected by 5:00 P.M. the following business day, and for each additional business day in which the Collection is not made up, which exceeds ten (10) such failures annually: \$150.00/day
- d) 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: \$150.00

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids secured which exceeds ten (10) such occurrences annually: \$150.00
- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually: \$150.00

- d) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually: \$150.00
- f) For each failure to deliver a Rolloff Box or temporary Bin within 48 hours of a Customer's request: \$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed: \$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein: \$250.00
- c) For each failure to notify City within one (1) hour from the time Company has remedied a complaint forwarded by City. \$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers: \$150.00
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company. \$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date. \$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

The 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.

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

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the

termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Contractor shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify City Manager sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.

- 4) Meet requirements of 10.5.3 below.

Contractor shall meet all requirements under this Section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 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.

Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a "reverse 911" contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company 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, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

10.6 Assurance of Performance

The City may, at its option and in addition to all other remedies it may have, demand from the Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require. If the Company fails

or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the City, such failure or refusal shall be an event of default.

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

11.2 Compliance with Law

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

11.3 Governing Law

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

11.4 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.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- b) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years;
- c) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the 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 sale of operations conducted by the Company 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 the City with a complete list of 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties 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.

11.9 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.

11.10 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 that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 The Company's Investigation

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

11.12 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

11.13 Notice

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

If to the City: City Manager
 City of Manhattan Beach
 1400 Highland Avenue

Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

And to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to the Company: USA Waste of California, Inc.
1920 East 213th Street
Long Beach, CA 90810
Attn: District Manager

Copy to: USA Waste of California, Inc.
Group General Counsel
Waste Management - Western Group
7025 Scottsdale Avenue
Suite 200
Scottsdale, AZ 85253

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

11.14 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

11.15 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of 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 under Section 10 of this Agreement.

11.16 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

11.17 Privacy

The Company 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 the Company 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 so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.18 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

11.19 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

11.20 Guarantee of Contractor's Performance

Pursuant to a guarantee in substantially the form attached as Exhibit 4, Waste Management Holdings, Inc., a Delaware corporation which owns all of the issued and outstanding common stock of USA Waste of California, Inc., has agreed to guarantee the Company's performance of this Agreement. The Guarantee is being provided concurrently with the Company's execution of this Agreement.

11.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

12.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

12.4 Interpretation

This Agreement, including the exhibits 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.

12.5 Agreement

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

12.6 Severability

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

12.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH

("City")

ATTEST: _____
CITY CLERK

By: _____
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

USA Waste of California, Inc.

City Attorney

By: _____
Name:
Title:

EXHIBIT 1

PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 2
MAXIMUM INITIAL COMPANY COMPENSATION

Residential Monthly Rates (As of October 1, 2010)

Flat Rate Automated and Manual Three-Cart/Can Collection Service for Single Unit Homes	Monthly Rate	
	Standard Service	Backyard Service Surcharge ⁽²⁾
Any size or number of cans/carts	\$ 12.66	\$ 7.34

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building	
	Standard Service	Backyard Service Surcharge ⁽²⁾
2 Dwelling Units	\$ 24.04	\$ 13.99
3 Dwelling Units	\$ 34.81	\$ 20.24
4 Dwelling Units	\$ 45.57	\$ 26.48
5 Dwelling Units	\$ 56.30	\$ 32.76
6 Dwelling Units	\$ 67.07	\$ 39.00
7 Dwelling Units	\$ 77.82	\$ 45.33
8 Dwelling Units	\$ 88.59	\$ 51.51
9 Dwelling Units	\$ 99.34	\$ 57.77

Residential Cart Monthly Rates (As of January 1, 2011)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate	
	Standard Service	Backyard Service Surcharge ⁽²⁾
96-gallon refuse ⁽¹⁾	\$ 14.57	\$ 7.34
64-gallon refuse ⁽¹⁾	\$ 12.85	\$ 7.34
35-gallon refuse ⁽¹⁾	\$ 11.24	\$ 7.34

(1) Rate for first container at each dwelling unit. Additional containers shall be collected by Company for no additional charge.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

EXHIBIT 2 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(as of October 1, 2010)

Commercial Bin Rates

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 13.80	\$ 27.60	\$ 41.41	\$ 55.21	\$ 69.01	\$ 82.81	\$ 96.62	\$ 3.50
32-Gallon Cart	\$ 13.80	\$ 27.60	\$ 41.41	\$ 55.21	\$ 69.01	\$ 82.81	\$ 96.62	\$ 3.50
64-Gallon Cart	\$ 27.60	\$ 55.20	\$ 82.82	\$ 110.42	\$ 138.02	\$ 165.62	\$ 193.24	\$ 7.00
96-Gallon Cart	\$ 41.40	\$ 82.80	\$ 124.23	\$ 165.63	\$ 207.03	\$ 248.43	\$ 289.86	\$ 10.00
2 Cubic Yard	\$ 70.03	\$ 105.04	\$ 140.03	\$ 175.06	\$ 210.06	\$ 280.08	\$ 350.08	\$ 19.35
3 Cubic Yard	\$ 89.95	\$ 133.25	\$ 177.66	\$ 222.08	\$ 266.49	\$ 355.31	\$ 444.14	\$ 29.00
4 Cubic Yard	\$ 107.76	\$ 161.65	\$ 215.54	\$ 269.42	\$ 323.30	\$ 431.08	\$ 538.84	\$ 38.69
6 Cubic Yard	\$ 138.54	\$ 207.81	\$ 277.10	\$ 346.38	\$ 415.65	\$ 554.20	\$ 692.74	\$ 58.01
2 Cubic Yard Compactor	\$ 119.57	\$ 179.29	\$ 239.04	\$ 301.98	\$ 358.58	\$ 478.15	\$ 597.80	\$ 33.04
3 Cubic Yard Compactor	\$ 152.46	\$ 228.71	\$ 307.09	\$ 381.10	\$ 457.28	\$ 609.75	\$ 762.21	\$ 49.15
4 Cubic Yard Compactor	\$ 185.61	\$ 278.36	\$ 371.15	\$ 463.89	\$ 556.74	\$ 742.27	\$ 927.96	\$ 66.64
6 Cubic Yard Compactor	\$ 239.47	\$ 359.19	\$ 478.95	\$ 598.64	\$ 718.37	\$ 957.84	\$ 1,197.31	\$ 100.27

EXHIBIT 2 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(as of October 1, 2010)

Rolloff Box Rates

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	\$ 166.87 per pull
Compactor Box, Any Size	\$ 225.28 per pull
Rolloff Per Ton Charges	
Refuse Disposal	\$ 36.72 per ton
Additional Container Rental - (for boxes emptied less than 3x/month)	
Standard Box, Any Size	\$ 29.89 per week
Compactor Box, Any Size	\$ 40.25 per week

EXHIBIT 2 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(as of October 1, 2010)

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 77.35	\$ 87.03	\$ 96.69	\$ 116.04
Each Additional Dump	\$ 19.35	\$ 29.00	\$ 38.69	\$ 58.01
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month
Cart Exchange	per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Commercial Green Waste Cart	50% of comparable refuse service rate
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	per applicable overage (see Section 3.1.6)

EXHIBIT 3A

EXAMPLE CART & 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)	\$ 20.80	\$ 21.80	4.8%	
2	Fuel	(2)	344.0	159.1	-53.8%	
3	Transfer Fuel	(3)	324.9	180.6	-44.4%	
4	Equipment	(4)	118.9	124.3	4.5%	
5	Disposal	(5)	215.8	219.2	1.6%	
6	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%	
7	All Other	(5)	215.8	219.2	1.6%	

Step Two: Determine components					
Row	Adjustment Factor	Index	D	E	F
			Cost Factor Category Weighted as a % of Component Total (7)	Percent Change In Index (from Column C)	Total Weighted Change
8	Labor	(1)	31.1%	4.8%	1.5%
9	Fuel	(2)	4.5%	-53.8%	-2.4%
10	Transfer Fuel	(3)	2.3%	-44.4%	-1.0%
11	Equipment	(4)	12.9%	4.5%	0.6%
12	Disposal	(5)	33.4%	1.6%	0.5%
13	Transformation	(6)	2.3%	14.6%	0.3%
14	All Other	(5)	13.5%	1.6%	0.2%
15	Total		100.0%		-0.3%

Step Three: Apply percentage change to rates						
Row	Rate Category	Current Customer Rate (8)	G	H	I	J
			Total Weighted Percent Change (from Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)	
16	64-gallon Cart Service	\$ 12.85	-0.3%	\$ (0.04)	\$ 12.81	
17	2 unit Service	\$ 24.04	-0.3%	\$ (0.07)	\$ 23.97	
18	1 unit backyard	\$ 7.34	-0.3%	\$ (0.02)	\$ 7.32	
19	2 unit backyard	\$ 13.99	-0.3%	\$ (0.04)	\$ 13.95	
20	Extra bulky item	\$ 21.60	-0.3%	\$ (0.06)	\$ 21.54	
19	Special Pickup/Cart Ov.	\$ 5.00	-0.3%	\$ (0.02)	\$ 4.98	
20	Commercial Can	\$ 13.80	-0.3%	\$ (0.04)	\$ 13.76	
21	3 yd bin, 1x week	\$ 89.95	-0.3%	\$ (0.27)	\$ 89.68	
22	3 yd comp., 1x week	\$ 152.46	-0.3%	\$ (0.46)	\$ 152.00	
23	3 yd bin, extra pickup	\$ 29.00	-0.3%	\$ (0.09)	\$ 28.91	

Step Four: Re-weight cost components							
Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change as Applied to Rate Adjustment (Column F)	Increase in Cost Components (Column K x Column L)	Cost Component Increased (Column K + Column M)	Cost Components Reweighted to Equal 100%
24	Labor	(1)	31.1%	1.5%	0.5%	31.6%	31.4%
25	Fuel	(2)	4.5%	-2.4%	-0.1%	4.4%	4.4%
26	Transfer Fuel	(3)	2.3%	-1.0%	0.0%	2.3%	2.3%
27	Equipment	(4)	12.9%	0.6%	0.1%	13.0%	12.9%
28	Disposal	(5)	33.4%	0.5%	0.2%	33.6%	33.4%
29	Transformation	(6)	2.3%	0.3%	0.0%	2.3%	2.3%
30	All Other	(5)	13.5%	0.2%	0.0%	13.5%	13.3%
31	Total		100.0%			100.7%	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 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

(3) Producer Price Index, WPS057303 not seasonally adjusted, Fuels and related products and power, #2 diesel fuel - average annual change.*

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

(5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*

(6) Gate rate at transformation facility

(7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

(8) Example rates listed. Adjustment applies to all applicable rate categories.

* See Exhibit 3C.

EXHIBIT 3B

EXAMPLE ROLL-OFF BOX 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	Service Component (Pull Rate)				
2	Labor	(1)	\$ 20.80	\$ 21.80	4.8%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Transfer Fuel	(3)	324.9	180.6	-44.4%
5	Equipment	(4)	118.9	124.3	4.5%
6	All Other	(5)	215.8	219.2	1.6%
7	Refuse/Ton	(5)	215.8	219.2	1.6%

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
8	Service Component (Pull Rate)				
9	Labor	(1)	48.4%	4.8%	2.3%
10	Fuel	(2)	6.9%	-53.8%	-3.7%
11	Transfer Fuel	(3)	3.6%	-44.4%	-1.6%
12	Equipment	(4)	20.0%	4.5%	0.9%
13	All Other	(5)	21.1%	1.6%	0.3%
14	Service Component Total		100.0%	n/a	-1.8%
15	Refuse/Ton	(5)	100.0%	1.6%	1.6%

Step Three: Apply percentage change to rates

Row	Rate Category	Current Customer Rate	G	H	I	J
			Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column H x Column I)	Adjusted Rate (Column H + Column J)	
16	Standard Rolloff Box Pull Rate	\$ 166.87	-1.8%	\$ (3.00)	\$ 163.87	
17	Compactor Rolloff Box Pull Rate	\$ 225.28	-1.8%	\$ (4.06)	\$ 221.22	
18	Refuse/Ton	\$ 36.72	1.6%	\$ 0.59	\$ 37.31	

Step Four: Re-weight service component cost components

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change as Applied to Rate Adjustment (Column F)	Increase in Cost Components (Column K x Column L)	Cost Component Increased (Column K + Column M)	Cost Components Reweighted to Equal 100%
19	Labor	(1)	48.4%	2.3%	1.1%	49.5%	49.0%
20	Fuel	(2)	6.9%	-3.7%	-0.3%	6.6%	6.5%
21	Transfer Fuel	(3)	3.6%	-1.6%	-0.1%	3.5%	3.5%
22	Equipment	(4)	20.0%	0.9%	0.2%	20.2%	20.0%
23	All Other	(5)	21.1%	0.3%	0.1%	21.2%	21.0%
24	Total		100.0%			101.0%	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 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*
- (3) Producer Price Index, WPS057303 not seasonally adjusted, Fuels and related products and power, #2 diesel fuel - average annual change.*
- (4) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.*
- (5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*
- (6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

* See Exhibit 3C.

EXHIBIT 3C

EXAMPLE CALCULATION FOR

AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for fuel, transfer vehicle fuel, equipment, disposal and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index that is used to adjust the “disposal” and “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal” and “all other” cost components in Column C.

Consumer Price Index - All Urban Consumers, U.S. City Average
All items less food and energy, CUUR0000SAOL1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235
Average Annual Change:													1.7%

EXHIBIT 4

CORPORATE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the ____ day of ____, 2010.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. USA Waste of California, Inc., hereinafter ("Owner") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by Waste Management Holdings, Inc., (Guarantor).

B. Owner and the City of Manhattan Beach ("the City") have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, or cause to perform them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. Guarantor's Obligations Are Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. Term. This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. No Waivers. No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. Attorney's Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following Person as its agent for service of process in California:

With a copy by certified mail to:

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City: City Manager

City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

with a copy to the City Counsel at the same address.

To the Guarantor:

By: _____
(title)

By: _____
(title)

EXHIBIT 5

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That USA Waste of California, Inc., a Delaware corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2010.

a Delaware Corporation

SURETY

By: _____

(PRINCIPAL)

(SEAL)

By: _____

(ATTORNEY IN FACT)

(SEAL)

EXHIBIT 6

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 the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company 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:

EXHIBIT 7

CITY SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

EXHIBIT 8

OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Company Compensation to compensate Company for \$85,000 per year (\$7,083 per month) while the program is in place. City will determine how the increase shall be billed to Customers. This \$85,000 per year rate is effective as of October 1, 2010 and will subsequently be adjusted at 3% per year each July 1 beginning July 1, 2011.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);
- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and

- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist's paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7. However, electronic waste may be collected under this program provided it is co-collected with other HHW items on the same trip.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with start date, materials to be collected, and instructions on how to call in for a pickup. Company shall be required to update the City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of the City's "e-book") in public education mailers required under Section 4.3.2.

B. Additional Processing of Bin and Commercial Cart Refuse

City may request to have Company process all Bin and Commercial Cart and Can Refuse that is Collected on Bin routes. Company will recover a minimum of 3,549 tons per calendar year from this program, including the 1,364 tons required to be recovered under Section 3.5 and an additional 2,184 tons to be recovered. These annual tonnage requirements shall be pro-rated if program begins or ends partially through a calendar year. City may instruct Company to begin the additional processing upon 90 day notice, with a corresponding Company Compensation increase of \$155,000 per year, or \$12,917 per month while this requirement is in place. This \$155,000 per year cost is as of October 1, 2010 and shall increase at a rate of three percent (3%) each year each July 1, beginning July 1, 2011. City will determine how the increase will be applied to Customer rates.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$71 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted

through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not include any business instruction and therefore does not need to be placed in outreach materials.

EXHIBIT 9

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

CITY OF MANHATTAN BEACH

WORKPLAN FOR COMPETITIVE RFP PROCESS

TASK DESCRIPTION	Sr. Vice President	Director	Senior Associates	Associate	Total Hours
1. Prepare Procurement Strategy					
A. Prepare schedule and key RFP issues	4	0	6	0	10
B. Meet once with City staff (meeting #1)	4	0	4	0	8
2. Prepare and Issue Request for Proposals					
A. Prepare draft RFP and revise agreement	16	8	60	50	134
B. Revise documents once after review by City Attorney, other City staff, and potential proposers	8	0	8	0	16
C. Attend Council meeting to approve RFP package (meeting #2)	6	0	6	0	12
D. Prepare for and attend proposers' conference (meeting #3)	4	0	6	0	10
E. Prepare addenda	4	2	12	2	20
3. Review and Evaluate Proposals					
A. Review proposals for completeness	1	0	4	0	5
B. Evaluate complete proposals (maximum of five)	15	0	50	20	85
C. Prepare follow-up questions for proposers	4	0	8	0	12
D. Review responses and clarify unresolved issues	4	0	8	0	12
E. Meet with City staff to discuss preliminary evaluation (meeting #4)	5	0	5	0	10
F. Interview proposers (meeting #5)	8	8	8	0	24
G. Contact references for recommended contractor	1	0	4	6	11
H. Prepare evaluation report and review City staff report	16	0	32	20	68
I. Review City comments and prepare final evaluation report	4	0	8	0	12
4. Negotiate Final Agreement and Prepare a New Agreement					
A. Participate in one negotiating session (meeting #6)	8	0	8	0	16
B. Prepare revised portions of agreement	8	0	16	0	24
C. Attend up to two Council meetings for approval of final agreement (meetings #7 and #8)	12	0	12	0	24
5. Manage Project and Prepare Workpapers	4	2	4	2	12
Total Hours	136	20	269	100	525
Hourly Rate	\$ 245	\$ 200	\$ 195	\$ 140	
Fees	\$ 33,320	\$ 4,000	\$ 52,455	\$ 14,000	\$ 103,775
Expenses					\$ 1,225
Total Budget					\$ 105,000



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Honorable Mayor Ward and Members of the City Council

THROUGH: Richard Thompson, Interim City Manager

FROM: Jim Arndt, Public Works Director
Anna Luke, Management Analyst

DATE: September 7, 2010

SUBJECT: Consideration to Approve the Solid Waste Request For Proposal (RFP) for Public Distribution to Interested Waste Haulers

RECOMMENDATION:

Staff recommends that the City Council review and approve the City of Manhattan Beach's Solid Waste RFP and Franchise Agreement package for public release.

FISCAL IMPLICATION:

The Request for Proposal (RFP) process requires competitive proposals from interested haulers. User rates cannot be determined until RFP bids are received and pricing from bidding haulers is made public, and Council selects a solid waste hauler. If the proposed user rates exceed the amount of the existing user rates, a 218 vote is required, which allows residents to approve or reject the proposed rates for the next solid waste contract. The City's Administrative Fee covers the costs of City Staff in the execution of the solid waste contract, which is not included in the contractor proposal and will be added separately.

BACKGROUND:

At the April 6, 2010 meeting, the City Council directed staff to pursue the Request for Proposal process for the next solid waste contract, and on April 20, 2010 awarded a professional services contract to HF&H Consultants, LLC to assist the City with this process. City Council has had discussions surrounding the content and direction of the solid waste contract at the following public meetings:

May 5, 2009	April 6, 2010
July 7, 2009	May 4, 2010
December 1, 2009	July 6, 2010
February 16, 2010	July 20, 2010

In addition to the above City Council meetings, the Environmental Task Force (ETF) Solid Waste

and Recycling Subcommittee (SWRS) discussed the current contract through its term from October 2008 – April 2010. ETF meetings were open to the public and attended by City Council ETF Representatives, Mayor Ward and Councilmember Cohen.

At their August 3, 2010 meeting, the City Council deferred action approving the RFP to the September 7, 2010 meeting. Updates have been made in the RFP and Franchise Agreement in regards to the City’s commitment to environmental sustainability.

DISCUSSION:

The draft RFP and Franchise Agreement were reviewed and approved by the Finance Subcommittee on July 6, 2010. The new franchise agreement includes greater efficiencies, programs, and accountability. The attached RFP and Franchise Agreement includes enhanced environmental language since the August 3, 2010 City Council meeting, *highlighted in yellow* for easy reference. These changes reflect more clearly the City’s commitment to environmental sustainability and summarize the Environmental Task Force’s recommendations.

The contract has been drafted for a August 1, 2011 start date. Proposers are given the option to base their proposal on either a July 1, 2011 or August 1, 2011 start date. The successful hauler start dates will be adjusted accordingly in the final Franchise Agreement.

Notable Changes from the Current Waste Management Contract

The following notable changes are new terms, improvements to existing contract terms, or programs which have been in place but not formally written into the contract. These changes include the Environmental Task Force Solid Waste and Recycling Subcommittee’s recommendations, which are recognized with a (*):

All Sectors

- Contract term of seven (7) years
 - City option to extend monthly for twenty-four (24) months.
 - Proposed term of the contract from July 1, 2011 to June 30, 2018
- *New hauler-provided automated carts, city-wide with at least 20% recycled content for residential and commercial cart customers
- New carts will display City logo on side of cart and a label on the lid indicating items which can and cannot be placed in the container, including proper HHW disposal information
- *Abandoned item collection
- *Styrofoam recycling
- *Public Education Plan with emphasis on zero waste to all sectors including web-based outreach
 - Semi-annual brochures – one for residential, one for commercial
 - Quarterly notices – bill inserts in City utility bills
 - Annual notification of free commercial recycling
 - Web-based “e-book” or “e-catalogue”
- *Alternative fuel collection vehicles
- *(Option) Exclusive construction & demolition debris collection – if Council-approved after 2014, will require a minimum 70% recycling rate

- Exhibit 11 – City’s Commitment to Environmental Sustainability
- Recycled paper required for all hauler-provided outreach materials
- Hauler-provided Government Liaison, Service Liaison (Route Manager), Customer Service Liaison (responsible for City’s online work orders), and School Outreach Liaison

Residential Only

- *Automation of Sand Section (city-wide automation)
- *Sharps collection program – no co-pay
- *Residential 6-month food waste pilot (with option for full program)
- *Residential tiered-rate structure for TRASH CARTS – residents choose 35, 64, or 96 gallon and pay per TRASH CART ONLY
 - recycling (blue) and greenwaste (green) at no additional cost
- *(Option) Residential door-to-door hazardous waste pickup by appointment
- Quarterly recycling facility tours for residents
- Discounted compost bin program & three free annual composting classes

Commercial Only

- *Commercial 6-month food waste pilot (with option for full program)
- *Annual mixed waste processing of a portion of commercial bin waste – resulting in 1,365 tons of recyclables recovered from trash (in addition to business recycling program)
- *Overage fees for excessive, overflowing commercial refuse
- *Commercial zero waste recognition plan to improve recycling
- *(Option) Annual mixed waste processing of ALL commercial bin waste – resulting in 2,184 tons of recyclables recovered
 - in addition to the 1,365 tons recovered in standard program – for a total of 3,549 tons recyclables recovered annually from commercial trash
- Hauler-required visits to commercial businesses who do not have recycling accounts within first year of contract, including two-week follow up visits to assist with education; visits for new businesses
- Desk-side recycling containers for commercial – provided at cost
- Commercial green waste collection for select accounts (i.e.: florists, nurseries, etc.)
- Take-back program assistance

Schools Only

- Free recycling collection at all Manhattan Beach schools
 - Schools are exempt from solid waste franchise agreements; however, they may choose the services of the city’s contracted hauler
 - Regardless if the schools choose the services of the City’s hauler or if they contract their own, the schools will receive free recycling services under this contract
- *Hauler-supplied in-classroom and on-campus recycling containers
- *School zero waste outreach plan including web-based outreach
 - Minimum one assembly promoting recycling at each city each year

- Education & training on waste reduction and recycling to students and teachers
- Web-based resources for district and schools' websites
- Upon request "kick-off" event at the beginning of each school year & end of year "close-out" event
- Classroom presentations aimed at school and home recycling
- Training and ongoing consultation of waste reduction for school staff and volunteers
- Hauler to create annual awards program and incentive programs to promote on-campus sustainability
- Proper signage on all school sites on recycling
- Upon request provide teachers with sample lesson plans and activity sheets (recycled paper) on relevant topics of sustainability
- School Liaison contact each school at least once per semester to offer all services mentioned above.
 - Liaison will keep record of all activity and contact information
- Upon request hauler will work with school administration, parent volunteers, janitorial staff, etc. to review recycling practices and opportunities to reduce waste.
 - Liaison will follow up to make sure implementation is occurring
- Hauler must propose a minimum number of hours they will devote to this section

Multi-Family Only

- Flat rate cart customer rates; tiered rates for bin customers
- *Specific multi-family outreach plan
 - Proposers asked to provide minimum number of hours they will commit to these efforts
 - Recycling program guidelines, posters, etc. to property managers and residents
 - Hauler required to contact each MFD building owner or property manager within 14 months of new contract to implement recycling programs with emphasis on zero waste
 - Provide welcome packets for new residents upon move-in with info on what to recycle
 - Annual brochure mailing to each unit
- Hauler-supplied in-unit recycling containers to each MFD unit upon request of unit, property owner or manager.

Government

- Required hauler-diversion with liquidated damages for non-compliance
 - Proposers must submit a diversion percentage for their services of no less than 44%
 - Excludes third party recycling
 - The RFP states that the City will consider favorably a hauler who is able to provide a high diversion rate
- *City-facility hazardous waste pickup

*Environmental Task Force Recommendation

Changes since August 3, 2010

In addition to the environmental language, seven items were modified or added since the August 3, 2010 City Council meeting. These are believed to be minor to the overall impact of the contract. The location of each item is noted after each title; either in the RFP, which stands for Request for Proposal or FA, which stands for Franchise Agreement.

1. Extended Producer Responsibility assistance (RFP Section 17 iv/page 27, FA Section 4.3.10) – To accomplish the goal of Zero Waste, Extended Producer Responsibility must be incorporated, often in “Take-Back Programs.” The RFP asks the haulers to provide ideas on how they may assist the city with promoting Extended Producer Responsibility (ie: Take Back Programs). For example, a hauler may include in their Commercial Audit Form a section where they help company’s evaluate their environmental purchasing practices, or explore reuse ideas such allowing customers to bring back gently used items from the store which the store donates to the Salvation Army or Goodwill for a tax write-off. The goal of Extended Producer Responsibility is to make the manufacturers and sellers of goods active in the reuse or recycling of the waste they help generate.
2. Site visits to all commercial accounts without recycling programs (FA Section 3.2.3) – To comply with the solid waste and recycling portion of AB 32, California will require commercial recycling in January 2012 (state is still developing language). In order to proactively prepare for this new unfunded mandate, the contract states that the hauler must visit all bin customers within one year of the contract start date to try to set up a recycling account. They must keep record of their visits (contact information, whether new account set up, etc.) and provide the city a monthly update of their actions. Also, every six months the hauler must provide the city with an accounting of the bin customers who do not have recycling accounts.
3. Web-based resources for schools (FA Section 4.3.8) – Web-based resources were already written as part of the overall outreach program; however, specific mention in the school section was not listed before August 3rd. Since MBUSD heavily utilizes their website for correspondence, web-based resources seem essential.
4. All public outreach on, and identified as, recycled paper (FA Section 4.3.1) – Utilizing recycled paper for outreach materials is not formally written into the current agreement. As part of the commitment to environmental sustainability, staff included this requirement. The awarded hauler may choose to focus on web-based resources to reduce printing costs if recycled paper is too expensive.
5. Requiring recyclable content in new carts, and carts must be recyclable (RFP Section 8, FA Section 3.7.1.3) – Proposer must list the percentage of recyclable content which will be included in all new carts. The contract also requires that the new carts be recyclable.
6. Split bin request (RFP Section 15ii/page 26) – The contract requests for the proposers to provide size and cost information on optional split bins for locations with spatial constraints. San Luis Obispo utilizes split bins for areas with spatial constraints similar to Manhattan Beach’s. For example, the entire bin is 4 yards, divided, has separate locking lids, and is painted two separate colors with identification of the trash and

recycling sides. Split bins are capable of being serviced with the regular collection trucks as the undesired lid is locked so the materials do not empty into the truck's bin.

Updated RFP Schedule

Also on your agenda is an extension to the current Waste Management contract. If passed, the following chart reflects the new tentative schedule to complete the RFP process. Many tasks need to be completed in order to meet a deadline of August 1, 2011. If any tasks are delayed, the City may need to utilize additional extension months (up to 6 months, or October 31, 2011 per Council Item on September 7, 2010 current Agenda) with Waste Management to maintain service to all customers until the new contract begins. The following schedule includes tentative dates to execute each task:

DATE	DESCRIPTION OF TASK
September 7, 2010	City Council approve RFP package
September 8, 2010	Public release of RFP package
September 20, 2010	Pre-proposal conference with HF&H, staff, proposers
October 29, 2010 @ 3:00 PM	Deadline to submit proposals
November/December 2010	HF&H evaluate proposals
November 2, 2010	City Council approve Administrative Fee and any ordinance changes
December 7, 2010	HF&H meet with staff & Finance Subcommittee to review preliminary information on proposals
December 2010	Interview finalists, check references
December 2010/January 2011	HF&H, staff and final proposers meet to negotiate final agreement
January 18, 2011	Finance Subcommittee review final agreement
February 1, 2011 City Council Meeting	City Council award hauler with new agreement, establish rates, approve 5 year rate plan, approve any necessary ordinance changes
February 2, 2011	Start 218 process
February 4, 2011	Mail 218 ballots & place public notice
February 2011	Public Meeting (218) #1
February 2011	Public Meeting (218) #2
April 5, 2011	Public hearing for 218 process
April 19, 2011	City Council consider new rates
April 20, 2011	Hauler send out mailing for cart size options to customers
April 20 – May 16, 2011	Hauler provides City Billing Department the information on cart size option card information within (2) two days of receipt of card
May 16, 2011	Deadline for customers to return cart size cards to Hauler
May 18, 2011	Deadline for Hauler to provide all final customer information regarding cart size cards to City Billing Department
May/June 2011	City Billing Department inputs new customer cart information for August 1, 2011 start date
July 1 – 31, 2011	Hauler removes old carts & delivers new carts to customers
July 1, 2011	Hauler mails final 30 day reminder to all customers of new contract to begin August 1, 2011
August 1, 2011	New contract begins

CONCLUSION:

Staff recommends that the City Council review and approve the City of Manhattan Beach's Solid Waste RFP and Franchise Agreement package for public release.

Attachment:

- (1) Request for Proposals for Integrated Solid Waste Management Services

Cc: Laith Ezzet, HF&H Consultants, LLC
Bruce Moe, City of Manhattan Beach Finance Director

THE CITY OF MANHATTAN BEACH
REQUEST FOR PROPOSALS
FOR
INTEGRATED SOLID WASTE MANAGEMENT SERVICES

* * *

September 1, 2010

Prepared by:



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**CITY OF MANHATTAN BEACH
REQUEST FOR PROPOSALS FOR
INTEGRATED SOLID WASTE MANAGEMENT SERVICES**

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LIST OF ATTACHMENTS

Attachment 1: Proposal Outline

Attachment 2: Existing Service Data

Attachment 3: Rate Proposal Forms

Attachment 4: Supporting Costs and Operating Data Worksheets

Attachment 5: Anti-Collusion Affidavit

Attachment 6: Draft Franchise Agreement for Integrated Solid Waste Management Services

SECTION I - INTRODUCTION

OVERVIEW OF THE REQUEST FOR PROPOSAL

The City of Manhattan Beach ("City") is requesting proposals from qualified solid waste companies to provide solid waste collection, transportation, recycling, processing and disposal services **with a commitment of sustainability to reduce the landfill tonnage in the City of Manhattan Beach.** Waste Management ("WM") currently provides the City with exclusive residential and commercial collection services, including permanent roll-off and temporary non-construction and demolition bin services. Temporary roll-off box service and construction and demolition debris collected using temporary bins are non-exclusive.

COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);

- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on “Zero Waste” in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage.

TERM OF NEW AGREEMENT

The term of this agreement shall commence on July 1, 2011 or August 1, 2011, as proposed by the hauler, and expire on June 30, 2018. The City may extend the agreement for up to 24 months at its sole option. See Section 2.5 of the draft agreement.

SUMMARY OF REQUESTED SERVICES

A description of the service area is included in Section II of this RFP. Existing service data provided by WM and the City is included in Attachment 2. The services for which the City is seeking proposals are summarized in Table 1 below and are briefly described in Section III of this RFP. A more comprehensive description of the scope of services is found in the draft franchise agreement in Article 3.

Table 1: Requested Services

SERVICE TYPE	SERVICE DESCRIPTION
Residential Cart Customer Services	<ul style="list-style-type: none"> ◆ Automated Refuse Collection ◆ Automated Recyclables Collection ◆ Automated Green Waste Collection ◆ Backyard Service ◆ Compost Classes & Recycling Facility Tours - free to residents ◆ Compost Bin Distribution ◆ Multi-Family Recycling/Zero Waste Outreach Program
Commercial/Multi -Family Services	<ul style="list-style-type: none"> ◆ Permanent Refuse Bin Collection ◆ Temporary Non-C&D Refuse Bin Collection ◆ Commercial Refuse Cart and Can Collection ◆ Recyclables Bin and Cart Collection ◆ Green Waste Roll-Off Box Service ◆ Bin Waste Processing to Recover 1,365 Tons Annually ◆ Permanent Roll-Off Box Service ◆ Desk-side Recyclers for Businesses - provide at cost
City Services - Included At No Additional Charge	<ul style="list-style-type: none"> ◆ Refuse, Recyclables, Green Waste Collection From City Facilities ◆ Hazardous Waste Collection from City Facilities ◆ Street Litter Container Collection - Refuse and Recycling ◆ Abandoned Item Collection ◆ Refuse and Recyclables Collection and Recycling at City-Sponsored Events ◆ Public Education and Outreach Program (for multiple sectors) - focus on Zero Waste

Table 1: Requested Services (continued)

CUSTOMER TYPE	SERVICE DESCRIPTION
Special Services	<ul style="list-style-type: none"> ◆ Bulky Item Collection – free to residents, charge to businesses ◆ Holiday Tree Collection – free to all residents ◆ Sharps Collection Program – free to all residents ◆ Residential Food Waste Diversion Six-Month Pilot Program ◆ Commercial Food Waste Diversion Six-Month Pilot Program ◆ Implementation of Residential Volume-Based Rate System ◆ Composting Classes – free to residents ◆ Composting bin program – hauler to order and deliver bins, paid for by resident co-pay and City subsidy ◆ School Recycling/ Zero Waste Outreach Program
Optional Services	<ul style="list-style-type: none"> ◆ Door-to-Door HHW Collection ◆ Mixed Waste Processing of All Bin Waste ◆ Construction and Demolition Debris Collection (pending City Council approval after 2014)

Section V of this RFP describes the required contents of the proposal. Failure to complete and submit all of the forms and the other information required in Section V may be grounds to disqualify a proposal. The proposal should be organized according to the outline shown in Attachment 1.

Please note that the City’s procurement of Integrated Solid Waste Management Services is not subject to State or local public bidding laws, and the City does not intend to cause the current RFP process to become subject to such public bidding laws or regulations.

PROPOSAL CLARIFICATIONS AND UPDATES

After reviewing the RFP package, proposers may find that they require clarification of some requirements. Proposers may submit oral or written questions. Written responses to such questions, addenda and clarifications, if any, will be provided via e-mail to all potential proposers that leave their contact information when they request the RFP. Proposers should leave the primary contact name, company name, address, e-mail address, and phone number. Only written responses will govern. Written questions may not be accepted after the date shown in the schedule in Table 2 at the end of this section, as this would leave insufficient time for the City to provide an adequate response to all potential proposers. However, if proposers have simple questions regarding how to complete submittal forms or otherwise complete the proposal requirements, proposers may continue to request assistance via telephone until the proposal due date. See “Communications During RFP Process” below for instruction on where to submit timely questions.

COMMUNICATIONS DURING RFP PROCESS

Communications regarding this RFP shall be made exclusively through Laith Ezzet or Lisa Keating of HF&H Consultants, the City's consultant, by mail at 3990 Westerly Place, Suite 195, Newport Beach, California, 92660, Laith by telephone at (949) 251-8902, Lisa by telephone at (949) 251-4817, by fax at (949) 251-9741 and by e-mail at lezzet@hfh-consultants.com or lkeating@hfh-consultants.com, or through Anna Luke of the City of Manhattan Beach, who can be reached at (310) 802-5363, and by e-mail at aluke@citymb.info. Proposers and their representatives that contact other City personnel or City Council members after the City releases the RFP and throughout the evaluation period regarding this RFP process and contract award may have their proposals disqualified from consideration by review and action of the City Council. However, proposers and their representatives may contact HF&H Consultants, LLC at any time. The "RFP evaluation period" shall terminate when the City Council awards the solid waste handling services agreement.

PROPOSAL ADMINISTRATION

The City of Manhattan Beach shall have the right to perform, and each proposer must agree to cooperate with, an investigation and review of each proposer's ability to perform the work required. Such cooperation shall apply not only to the verification of the proposer's capability and experience in the provision of services, but also to the provision of any other component of work that may be required under this procurement.

In order to objectively evaluate all proposals, the City has attempted to describe the desired services and the terms and conditions in the draft franchise agreement in a manner that will allow a reasonable level of comparability among the proposals. Therefore, the City discourages, and may disqualify, proposals that substantially deviate from the RFP. Proposals that do not include the completed forms required herein and information required in Section V may be disqualified. Provided that the proposer has submitted a proposal that meets all of the minimum requirements of this RFP, the proposer may also offer additional enhancements that exceed the RFP requirements.

The City reserves the right to reject all proposals, disqualify nonconforming or incomplete proposals at its sole discretion, waive deviations from the RFP, and determine whether proposers are qualified. The City reserves the right to issue addenda to the RFP, to modify the RFP, to modify the franchise agreement, or to withdraw the RFP. The City may request clarification or additional information from any of the proposers at any point in the RFP process.

Proposals must comply fully with the requirements detailed in this RFP. Required supporting documentation must be included as attachments and be appropriately identified.

The existing service information presented in Section II and Attachment 2 of this RFP is for information only and the proposer agrees to indemnify and hold the City harmless for the accuracy of this data. All proposers should take whatever steps they believe are necessary to reasonably establish the actual existing service information when preparing their proposals.

SUBMISSION OF PROPOSALS

The draft franchise agreement containing the terms and conditions under which service will be provided (see Attachment 6) is an integral part of this RFP. This franchise agreement includes information related to service standards, rate setting, billing, reporting, and other activities related to the performance of these services.

Submission of a proposal shall constitute acknowledgment and acceptance of all the terms and conditions contained in this RFP, and in the draft franchise agreement, unless exception to particular terms and conditions are expressed in writing in the proposal. The successful proposer will be expected to enter into a franchise agreement with the City; only those exceptions noted in its proposal will be considered for modification. The City is not obligated to agree to these exceptions but reserves the right to negotiate modification of such noted exceptions to the draft franchise agreement.

Each and every term and condition of the proposal shall be irrevocable until the City enters into a franchise agreement to perform the scope of services for the proposed rates according to those terms and conditions. Within fifteen (15) business days of the selection of a proposal by the City Council, the selected proposer is bound to execute the franchise agreement, and furnish the required performance bond. The form of the performance bond is described in Section 8.5 of the draft franchise agreement. Within thirty (30) days following execution of the franchise agreement, and in any event prior to the performance of any services thereunder, the proposer is bound to provide evidence of all required insurance. The terms of this RFP and the proposals are firm for a period of two hundred and seventy (270) days. Once submitted, responses to this RFP cannot be altered without the City's express written consent. The City reserves the right to reject any or all proposals, and may elect to make a decision without further discussion or negotiation. This RFP is not to be construed as a contract of any kind. The City is not liable for any costs incurred by any potential proposer in the preparation of a response to this RFP. The City may withdraw or modify this request at any time.

Proposers must submit three (3) bound copies plus one (1) unbound photocopy-ready copy of the complete proposal in a sealed package. The package should be clearly labeled:

ATTENTION: CITY CLERK
PROPOSAL FOR INTEGRATED SOLID WASTE MANAGEMENT SERVICES
NAME OF PROPOSER
PROPOSER'S ADDRESS
PROPOSER'S CONTACT PERSON
PROPOSER'S TELEPHONE NUMBER
PROPOSER'S FAX NUMBER

The proposal may be mailed, couriered, or hand delivered to the City of Manhattan Beach, 1400 Highland Ave, Manhattan Beach, CA 90266. All proposals must be received by the City Clerk of Manhattan Beach by the date and time shown in the schedule in Table 2 at the end of this section, City of Manhattan Beach time. **Proposals received after this time and date may be returned unopened.** Postmarks will not be accepted as proof of receipt.

The successful proposer shall also provide an electronic copy to the City after the award of contract by City Council.

AWARD

To be considered, proposals must be complete and must conform to the requirements of this RFP as to form and content. The franchise agreement will be awarded to the proposer that the City Council determines will best assist the City to reach its goal of receiving the highest quality service at the lowest reasonable cost. The successful proposal may or may not be the lowest cost proposal. The City, however, reserves the right to reject any or all proposals, to accept or reject any one or more items of a proposal, or to waive any minor irregularities or informalities in the proposal.

SCHEDULE

The procurement schedule is shown in Table 2. These dates are subject to change by the City.

Table 2: Procurement Schedule

DATE	ACTIVITY
September 8, 2010	Request for Proposals available
September 20, 2010	Pre-proposal conference at 1:30PM, Public Works Training Room, 3621 Bell Ave., Manhattan Beach
	Following pre-proposal conference - City-conducted tour of City, highlighting collection challenges (1)
September 24, 2010	Last day to submit written questions
October 29, 2010	Proposals due to the City Clerk by 3:00 p.m.
February 2011	Award by City Council - begin Proposition 218 process
July 1, 2011 or August 1, 2011	Start of service

(1) Parties interested in participating in the City tour must contact Anna Luke with the City of Manhattan Beach after the release of this RFP at aluke@citymb.info or (310) 802-5363 to reserve a seat. Space may be limited and companies may be limited in the number of representatives permitted.

SECTION II – CURRENT SERVICE DATA

DESCRIPTION OF SERVICE AREA

The City of Manhattan Beach is an **environmentally-conscious, Ocean Safe City** located in the South Bay Region in southwestern Los Angeles County between the cities of El Segundo and Hermosa Beach. Approximately one-third of this City, running along the coast, is a densely populated beach community that has yet to be transitioned to automated residential collection service. The remaining two-thirds of the City contains many single-family homes and was transitioned to automated residential collection in 2002.

The following is City population and housing data according to the U.S. Census Bureau data as of 2000:

Population:	33,852	3 to 4 Units	1,097
Total Dwelling Units	15,094	5 to 9 Units	411
One Unit Detached	10,191	10 to 19 Units	265
One Unit Attached	1,347	20 or More Units	215
Two Units	1,535	Mobile Home	23(1)
		Boat, RV, van, etc.	10

(1) There are no mobile home parks in Manhattan Beach, although 23 units were reported on the 2000 Census. These may represent manufactured housing or construction trailers.

The City's residential areas can be divided into five sections as listed below. The unit counts are approximate, based upon 2000 Census data, and include both residential cart and multi-family bin customer dwelling units.

<u>Section</u>	<u>Unit Count as Percentage of Total</u>
Sand Section	32% (majority receive manual collection)
Tree Section	22%
Hill Section	7%
El Porto	7%
East Side/Manhattan Village	32%

This census information is meant to provide an overview of the City. Please see Attachments 2-A through 2-C, 2-E and 2-F for data regarding customer counts.

CURRENT SERVICE DATA

The City has obtained from the hauler, or provided from its own records, the data provided in Attachment 2. As stated in Section I, the City neither warrants nor accepts responsibility for the accuracy of the information. It is the responsibility of each proposer to undertake, at

its sole cost, any verification of this information necessary for it to submit a response to this RFP.

CURRENT RATES

The current rates effective for fiscal year 2010 (July 1, 2009 to June 30, 2010) are in Attachments 2-B, 2-D, 2-E and 2-F, along with the estimated customer counts by rate category. The City's administrative fee is billed in addition to these fees.

RATE REVENUES

Total rate revenue received for calendar year 2009 is included as Attachment 2-K.

TONNAGE

Tonnage for years 2007 through 2009, as reported by the current hauler, is included in Attachments 2-G, 2-H and 2-I. Commercial carts are collected on both the commercial bin routes and on commercial cart routes. Therefore, tonnage would be included in either category. Some construction and demolition debris has been included in these tonnage reports. Construction and demolition debris collection is not exclusive under the current agreement and is listed as an optional exclusive service upon City Council approval in 2014.

AB 939 PLANS

The City is committed to fully complying **and exceeding** AB 939 and future increases in diversion rate goals. The City is part of the Los Angeles Regional Agency, or LARA. The City submits its annual report to LARA, and LARA compiles all member cities' information into one report for CalRecycle. Therefore, the City does not submit a separate annual report to CalRecycle with the City's individual diversion rate. LARA's estimated diversion rate is 63% for 2006. The current hauler-reported diversion rates for the material it collects for 2008 and 2009 are 40% and 36%, respectively. These hauler-reported diversion rates do not include diverted C&D debris, as C&D debris collection is not exclusive under this agreement.

The City would prefer to achieve higher hauler-diversion rates from solid waste collected under this agreement and will consider the proposed diversion level in its evaluation of the proposals.

SECTION III – PROPOSED SERVICE REQUIREMENTS

The City is requesting proposals for the services described below. If these services represent a significant change to current services, such changes are noted. A more comprehensive description of these services is found in the draft franchise agreement, included as Attachment 6 of this RFP. References to sections and appendices refer to the draft franchise agreement; references to attachments refer to attachments to this RFP.

RESIDENTIAL CART COLLECTION SERVICES

Automation of Sand Section – Currently, approximately one-third of the City, along the coast, receives manual collection of refuse and recyclables. While entitled to green waste collection, few currently receive such service. This area is known as the “Sand Section.” The hauler currently performs manual collection in this area using a front loader equipped with a Currotto can. The remainder of the City receives automated three-cart collection. Under the new agreement, contractor shall be required to convert this Sand Section to three-cart automated collection. The City was informed by the current hauler that the area could be automated with the exception of the following homes:

- 13th Street Alley - Seven homes on the North side between North Highland Avenue and Bayview Drive
- 13th Place Alley – Seven homes between Ocean Drive and N. Manhattan Avenue
- 14th Place – 12 multifamily homes in the South side (duplexes and fourplexes) between Ocean Drive and N. Highland Avenue and ten homes (fourplexes) on the North side

Currently, the hauler must move solid waste cans from these homes to an accessible street for collection and return them. Under the new agreement, these homes, and any other that proposers may determine cannot receive fully automated service, shall receive wheeled carts, and the contractor shall continue to move them as necessary for collection purposes.

Transition to Volume-Based Rates – Currently, residents with cart or can refuse service receive unlimited refuse, recycling and green waste collection for a flat rate. Individual homes are all charged the same rate. Buildings with two to nine units that receive cart or can refuse service pay a slightly reduced per unit rate.

Residents in the Sand Section receive recycling and green waste barrels from the contractor and provide their own refuse barrels. Residents in the remainder of the City are provided refuse, recycling and green waste carts by the contractor. Carts and cans distributed by the prior contractor are the property of the City. The new contractor shall be responsible for the removal and recycling of these containers when new carts are distributed.

Under the new agreement, individual, single family customers will be charged based on the number and size of refuse carts selected. Residential cart customers with two or more

dwelling units per building will continue to be charged a flat rate for unlimited service. See Section 3.1.1.

City-Wide New Cart Distribution – Contractor will provide new refuse, recycling and, if requested, green waste carts of 96- 64- or 32-gallons to all residents, and will provide the opportunity for residents to request the size and number of each cart to be distributed. If a selection is not made, the default in the Sand District will be one 64-gallon refuse cart and one 64-gallon recycling cart, and the default in the remainder of the City will be one 64-gallon refuse cart, one 64-gallon recycling cart and one 64-gallon green waste cart. All residential customers will have an opportunity to request one cart exchange at no charge within six months of the initial cart distribution. Subsequent cart exchanges are to be requested in accordance with the approved rate schedule. See Sections 3.1.1 and 3.7.1.

Proposers will be responsible for the removal and diversion of unwanted cans and may keep recyclables revenue, if any, that may be generated from containers. See Section 3.7.1.2.

Refuse Cart Collection – City-wide weekly automated cart collection will be implemented by the start of service under this agreement, including the automation of the Sand Section which was previously collected manually.

Recycling Cart Collection – Residential cart customers will receive once per week automated recycling collection on the same day as their refuse collection. Customers may request additional recycling carts at no additional charge. See Section 3.2.1.

Green Waste Cart Collection – Residential cart customers will receive weekly automated green waste collection on the same day as their refuse collection. The green waste carts will be issued to Sand Section customers upon request. Customers may request additional green waste carts at no additional charge. See Section 3.3.1.

Compost Bins – Contractor shall purchase composting bins approved by the City and deliver one to each residential customer that requests one. Contractor will bill customer a co-pay amount to be determined by the City. The difference between the amount billed to customer and the actual cost to contractor (excluding delivery and other associated costs) shall be reimbursed to contractor by the City. The contractor is also responsible for three annual, one-hour composting classes. In 2009, 42 composting bins and 30 worm bins were ordered at these classes, and, outside of the classes, an additional composting bin and three worm bins were ordered and shipped to residents. See Section 3.3.5.

RESIDENTIAL BIN AND COMMERCIAL COLLECTION SERVICES

Refuse Bin Service - Contractor shall provide bin service to commercial and industrial customers, and to multi-family customers that use bins. Bin service will occur at least once every week or more frequently if required to handle the waste stream. Contractor shall provide 2, 3, 4 and 6 cubic yard bins upon request. See Section 3.1.3.1.

Some commercial customers require collection twice per day due to space constraints prohibiting additional containers. See Attachment 2-Q for a list of these customers. This list may change from time to time.

Commercial Cart or Can Service – As an alternative to bin service, contractor shall offer 32-, 64- or 96-gallon commercial cart service to commercial customers that do not have space for, or do not generate enough waste to use bins. If automation of collection is not feasible, a 30-gallon can may be provided. Such carts and cans shall become property of the City upon distribution. See Section 3.1.3.3.

Temporary Bin Service - Contractor shall provide exclusive temporary bin service to all customers requesting such service, with the exception of construction and demolition debris collection which is not included under this agreement. If contractor does not provide the requested temporary bin within 48 hours, the customer can request temporary service from another company. See Section 3.1.3.2.

Bin Cleaning and Maintenance - Contractor will be required to clean or replace bins upon customer request once per year at no additional charge. Contractor may charge \$35 per cleaning for additional cleanings. See Section 3.7.5.

Locking Bins – Contractor may charge for locking bins. See Section 3.1.3.4.

Scout Service/Push-out Service – Contractor may not charge for scout service or push-out service. See Section 3.1.3.5.

Recyclables Collection for Residential Bin and Commercial Customers – Contractor will be required to provide unlimited recyclables collection service using bins or carts to all customers requesting it. Contractor will be required to visit each customer in an effort to establish recycling programs and will provide reporting to the City regarding these efforts. Company shall provide requesting businesses with desk-side recycling containers at contractor’s cost. City will not grant an extraordinary rate increase to accommodate for the implementation or discontinuation of the State’s mandatory commercial recycling requirements. See Section 3.2.2.

Construction and Demolition Waste Recycling – Contractor shall make reasonable efforts to prevent construction and demolition waste that is suitable for recycling from being taken to the landfill. See Section 3.2.4 for recommended diversion steps. The City reserves the right to require the contractor to exclusively collect all construction and demolition waste generated in the City, diverting a minimum of 70%, at rates to be requested in this RFP. The determination of whether to implement this requirement is dependent upon a subsequent vote by the City Council, and will not be implemented prior to December 2014, due to the five year notice sent by the City in December 2009.

Mixed Waste Processing of Commercial Bin Waste – Contractor shall recover a minimum of 1,365 tons of recyclables from processing mixed commercial bin waste. This program will be conducted at no additional charge. There is currently no processing of bin waste in the City. See Section 3.5.

Roll-Off Box Collection – Contractor must provide permanent roll-off box service to all customers that request such service. The rates will include a “per pull” rate plus a “per ton” rate equal to the contractor’s actual cost (not to exceed per ton cost in Exhibit 2). Revenue from recyclable material loads will be returned to customer. See Section 3.1.4.

Green Waste Roll-Off Service – Contractor shall make permanent roll-off green waste collection available to all customers at a rate not to exceed the roll-off box refuse rate. See Section 3.3.2.

SPECIAL SERVICES

Holiday Tree Collection and Recycling – Contractor shall operate the annual holiday tree collection and recycling program at no additional charge. The program shall include collection from single-family and multi-family customers, starting from the first collection day after December 25 and ending on the second Saturday in January. All collected trees shall be diverted from disposal. See Section 3.3.3.

On-Call Bulky Item Pickup - Contractor will be required to provide on-call bulky item pickup service to all customers. Single and multi-family customers are entitled to three bulky waste pickups per dwelling unit per year at no additional charge (additional pickups are subject to the rate schedule in Exhibit 2). Commercial customers may be charged for bulky item pickup in accordance with the rate schedule in Exhibit 2. See Sections 3.1.5.1 and 3.1.5.2.

Residential Food Waste Diversion 6 Month Pilot Program – Contractor will submit a proposal by July 1, 2011 to the City detailing a pilot program to collect food waste from residential customers. Once approved by the City, the pilot program will commence on July 1, 2012, to be conducted for a minimum of six months for one full residential route, one day per week. Information regarding the results of the pilot program will be reported to the City. See Section 3.2.7.

Commercial Food Waste Diversion 6 Month Pilot Program - Contractor will submit a proposal by July 1, 2011 to the City detailing a pilot program to collect food waste from 10% of the commercial food waste generating customers in the City. At this time, this represents an estimated ten customers. Once approved by the City, the pilot program will commence on July 1, 2012, to be conducted for a minimum of six months. Information regarding the results of the pilot program is to be reported to the City. See Section 3.2.8.

CITY AND OTHER SERVICES

City Facilities' Collection – Contractor shall collect and dispose of all solid waste generated and recyclable materials and green waste accumulated at premises owned and/or operated by the City at no additional charge (including bulky waste items). Such premises include, but are not limited to, offices, parks, street maintenance operations, and street litter containers. See Attachment 2-L for the current list of facilities and service levels. Note that these facilities and service levels may vary over the term of the new agreement, with no increase in compensation to the franchisee for additional collection services. See Section 3.6.1.

Contractor will be required to add additional green waste bins and carts at City parks than those listed in Attachment 2-L in order to lower the quantity of green waste transported to, and collected from, City yard.

City Facilities Hazardous Waste Collection – Contractor will collect as needed and properly dispose of hazardous waste generated at City facilities at no additional charge. Quantities of materials to be collected each year shall be reasonably consistent with Exhibit 10 of the draft agreement. See Section 3.6.2.

Abandoned Item Collection – Contractor shall collect items abandoned in the public right-of-way within 24 hours of notification by the City at no additional charge. See Section 3.6.3.

Street and Park Litter Containers – Contractor shall collect and recycle/dispose of all solid waste deposited in the City's street and park litter containers as necessary to prevent overflow at no additional charge. The City anticipates adding more recycling carts over time at no additional charge. Growth in the number of refuse litter carts at no additional charge will be limited to a 5% increase. See Attachment 2-P for current estimated service levels and container locations. See Section 3.6.4.

City Sponsored Events – Contractor shall provide solid waste and recycling collection service at City designated events each year at no additional charge. This service will include providing containers to collect and dispose of all solid waste (cardboard disposal boxes and liners, refuse bins and/or roll-off boxes), providing containers to collect recyclables, and disposing or processing of all collected material. Such events include, but are not limited to, those listed in Attachment 2-M. See Section 3.6.5.

Sharps Collection Program – Contractor shall provide up to three sharps containers per year to each single and multi-family resident requesting such service at no additional charge. Estimates from the California Department of Finance as of January 1, 2010 indicate 15,577 residential dwelling units in the City, including both cart and bin customers. See Section 3.6.7.

OPTIONAL SERVICES

Exhibit 9 of the draft agreement includes optional services for which the City has requested costs.

Door-to-Door Household Hazardous Waste Collection Services – The City may direct the contractor to begin the door-to-door household hazardous waste collection program upon 90 days' written notice. The household hazardous waste collection program would provide single family and multi-family customers with unlimited pickups. Proposers are requested to propose an annual cost for this program, to be adjusted annually by CPI. See Exhibit 9, Section A for program guidelines.

Mixed Waste Processing of All Bin Waste – The City may request contractor to process all bin refuse that is collected by the contractor to recover an additional 2,184 tons of recyclable materials (in addition to the 1,365 tons recovered per Section 3.5) for a total of 3,549 tons recovered per year. The City may instruct contractor to begin the additional processing upon a 90 days' notice. Proposers are requested to propose a percentage rate increase to bin rates for this service. See Exhibit 9, Section B.

Exclusive Construction and Demolition Debris Collection – In December 2009, the City distributed a “five-year” notice to construction and demolition debris service providers in the City that the City may contract exclusively for the provision of this service. The City may require the hauler at any time during this agreement term after December 2014 to provide exclusive construction and demolition debris services to the City. See Exhibit 9, Section D.

SECTION IV -KEY CONTRACT TERMS

A comprehensive description of contract terms is found in the draft franchise agreement. Below are some key terms to bring to your attention. Section references to the draft franchise agreement are included in the following summary.

HOLIDAY COLLECTION

If the regularly scheduled residential collection day falls on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day, collection days for the remainder of that week shall all be postponed one collection day. Commercial collection shall continue despite holidays. See Section 3.9.1.

EDUCATION AND PUBLIC AWARENESS

The City recognizes that effective public education is the key to implementing effective programs. The City intends to enhance public education efforts particularly for commercial and multi-family customers, and in its schools. The City intends to include a minimum number of staff hours to be dedicated to each of these three sectors in the agreement. A mailing list including addresses for each individual multi-family unit in the City is in the process of being assembled to facilitate mailing annual brochures. See Attachment 2-T for an estimate of participating schools and student populations. Refer to Section 4.3 of the draft franchise agreement for specific requirements relating to public outreach.

FAITHFUL PERFORMANCE BOND

Contractor will be required to provide a \$500,000 performance bond. See Section 8.5.

INSURANCE REQUIREMENTS

The draft agreement requires the contractor to maintain minimum insurance levels. See Section 8.4 for the minimum limits of insurance for general liability, automobile liability and workers compensation.

REPORTING AND AUDITING

The draft franchise agreement contains detailed auditing procedures, and specific reporting and record keeping requirements. See Article 7 of the draft franchise agreement for detailed information on the required records, reports, and review requirements.

Note that the contractor is required to reimburse the City for biennial audits, up to \$80,000 for the first audit after FY 2012 and \$50,000 for each subsequent biennial audit (subject to CPI adjustments). See Section 7.2.6.

MINIMUM DIVERSION RATES

The City's contractor has reported an average diversion rate of 38% for 2007, 2008 and 2009, including an average of 8% achieved through transformation. The City estimates that the volume-based rate structure and the mixed waste processing of a portion of the bin waste may provide another 6%, although proposers should develop their own estimates based upon their knowledge and experience. The City intends to continue improving waste reduction efforts and, therefore, the minimum diversion rate that may be proposed shall be no lower than 44% (38% + 6%). ***However, the City would prefer to achieve higher diversion rates from solid waste collected under this agreement and will consider the proposed diversion level in its evaluation of the proposals.*** Proposers are required to propose a diversion rate to which they will contractually commit and demonstrate how they will achieve that rate on Attachment 4-E.

Third-party diversion and tonnage collected outside of this agreement, such as construction and demolition debris and temporary roll-off box service, *is not to be included* in this calculation. See Section 3.8.1.

COLLECTION CONTAINER OWNERSHIP

All carts and cans distributed under the new agreement shall become and remain the property of the City. Only the City logo, not the company name, shall be hot stamped on the containers; contractor name and number shall be placed on a label on top of the container. Contractor shall be responsible for cart and can repair and maintenance, and for replacing lost, stolen or damaged carts and cans within three business days at no additional charge. See Section 3.7.4.

Contractor shall be responsible for collecting City-owned carts and cans already in distribution. Contractor shall be expected to recycle the carts to the extent possible and may retain any scrap value received for these containers.

All bins placed in the City by the contractor shall remain the property of the contractor. Contractor shall be responsible for continued maintenance of the bins, as well as the once per year cleaning or replacing of the bins at no additional charge if requested or if necessary. See Section 3.7.5.

COLLECTION VEHICLE REQUIREMENTS

Contractor shall use vehicles that are no more than 10 years old. All route vehicles shall use natural gas at the start of service under this agreement. See Section 3.9.2.

Contractor shall have a GPS tracking system on all route vehicles that permits the City to access vehicle locations online. The City converted its vehicles to the Zonar tracking system, which is currently in use at the City. The City is looking for a system that provides similar services. See Section 3.9.2.E.4.

Proposers should carefully evaluate any challenges involved in providing automated service in the Sand Section. Residents have expressed safety and traffic congestion concerns regarding the use of standard size solid waste collection vehicles on the difficult-to-service streets in the Sand Section. Streets and alleys may be narrow, run one-way or be dead-ends. The City will favorably view the use of smaller, more specialized vehicles in such areas if feasible.

DEDICATED ROUTES

Solid waste collected from the City may not be commingled with solid waste from other jurisdictions. See Section 3.12.

FEES/FUNDING

Contracting Cost Reimbursement - Upon execution of the franchise agreement, contractor will be required to remit to the City a one-time contracting cost reimbursement of \$120,000 to reimburse the City for its costs of developing and awarding the franchise. This cost should be included in the proposed rates. See Section 2.2.

Funding of City Recycling Needs - Contractor shall provide the City with \$28,000 on July 1, 2011, to support the City's efforts in conducting the annual commercial waste reduction and recycling audits, fund recycling programs and otherwise support the City's solid waste goals. This amount will be increase by \$1,000 each year, to be remitted to the City on July 1. See Section 3.2.3.

BILLING

Contractor shall bill the customers directly for the compost bin co-pay, roll-off box and temporary bin services.

City shall perform all other billings under that contract. The City shall remit the payment to contractor on a monthly basis, within 30 days of the City billing customers. See Sections 4.1.1 and 4.1.2.

RATE ADJUSTMENT METHOD

Contractor may request an annual rate adjustment based on weighted indices. See Article 5 for the rate adjustment methodology.

Proposers are asked to propose a method to adjust the disposal component of the rate. See #15 on page 22 of this RFP.

SECTION V - PROPOSAL SUBMISSION REQUIREMENTS

The following information must be organized according to the outline in Attachment 1. Requested information should be identified by letter or number in the outline. All items must be addressed.

1. GENERAL REQUIREMENTS

At the beginning of the proposal, include a:

- 1.a title page
- 1.b transmittal letter identifying the name, mailing address, e-mail address, telephone number and fax number of the proposal contact person
- 1.c table of contents
- 1.d an executed anti-collusion affidavit (Attachment 5)
- 1.e Executed signature page of RFP addenda

2. RATE PROPOSAL FORMS (ATTACHMENT 3)

The service rates proposed for each type of service should be included in the rate schedules in Attachment 3. In addition to the rates, proposers should calculate the estimated total annual rate revenue from each type of service. The total annual rate revenue from the proposed rates should be summarized in Attachment 3-A ("Summary of Rate Proposal") and reconciled to the proposer's estimated revenue requirement (explained below) in Attachment 4. Calculations from Attachments 3-B through 3-G should flow through to Attachment 3-A. The City reserves the right to rebalance rates prior to contract execution if the change is revenue neutral to the franchisee. Exhibit 3 of the draft agreement in Attachment 7 contains rates for other services that are set by the franchise agreement.

A proposal may be deemed nonconforming or incomplete unless Attachment 3 is complete and submitted in its entirety. After the deadline for submission of written questions, a Microsoft Excel file containing Attachment 3 will be available and e-mailed to proposers requesting it by contacting Lisa Keating of HF&H at (949) 251-4817 or by e-mail at lkeating@hfh-consultants.com.

3. SUPPORTING COSTS AND OPERATING DATA (ATTACHMENT 4)

The supporting cost and operating data worksheet in Attachment 4-A provides a format for proposers to estimate their annual revenue requirement for providing all of the proposed services. Proposers must provide the operational statistics on which their estimated costs are based in Attachment 4-B. The operating statistics will be used to evaluate the reasonableness of the proposer's estimated revenue requirement. The proposer's estimated revenue requirement will be used to evaluate the reasonableness of the proposed rates. Attachment 4-C must be completed and may be used to determine weightings of cost components for rate

adjustments. Attachment 4-E demonstrates how the proposer plans to reach required diversion levels. Note that diversion programs put forth in Attachment 4-E, and elsewhere in proposer's proposal, will be incorporated into the franchise agreement.

A proposal may be deemed nonconforming or incomplete unless Attachment 4 is complete and submitted in its entirety. After the deadline for submission of written questions, a Microsoft Excel file containing Attachment 4 will be available and e-mailed to proposers requesting it by contacting Lisa Keating of HF&H at (949) 251-4817 or by e-mail at lkeating@hfh-consultants.com.

4. EXCEPTIONS TO TERMS OF THE FRANCHISE AGREEMENT

Include a list of any exceptions to the RFP and draft franchise agreement. Please reference the agreement section, describe the nature of the proposed exception, and identify proposed substitute language. In order to demonstrate that, but for the noted exceptions, the proposer agrees to all terms and conditions of the agreement as written, sign and include in this proposal the signature page of the draft agreement, along with the noted exceptions. The proposal is not considered complete without this signed page.

5. PROPOSER OVERVIEW

5.a Business Structure

Provide the following information:

- i Legal name of proposing entity that would sign franchise agreement and whether it is an individual, a partnership, a corporation, or a joint venture
- ii Entity that would submit financial statements and whether it is an individual, a partnership, a corporation, or a joint venture. If other than proposing entity, indicate relationship and willingness to sign corporate guarantee (see Exhibit 5 to Attachment 6)
- iii Number of years in which proposing entity has been organized and doing business under this legal structure (if other than an individual)
- iv Names of owners/stockholders with more than 10% of the company's equity
- v Names of all officers
- vi Corporate headquarters
- vii Local headquarters (if different)

5.b Description of Proposer's Experience

Identify the names of all the public agencies in Los Angeles County in which the proposer currently provides service, including what type of service (manual or automated residential, commercial, roll-off, temporary bin) and the nature of the exclusivity (exclusive franchise, non-exclusive franchise, permit or open system).

Additionally, the proposer should submit a brief description of the proposer's experience in California providing solid waste services under exclusive agreements to city or county

customers that qualifies it to perform the services being procured through this RFP; provide a table, including each jurisdiction's services (residential, commercial, etc). Include preferably three or more detailed citations for current municipal customers with services most similar to those requested in this RFP. Citations shall include:

- i The name of the jurisdiction
- ii Time period during which proposer provided service to the jurisdiction
- iii The type of customers served (e.g. residential or commercial)
- iv The services performed (e.g. refuse collection, recyclable materials collection or green waste collection)
- v Residential collection methods (e.g. manual or automated)
- vi Whether the services were exclusively or non-exclusively provided in the jurisdiction by the proposer
- vii The name, address and telephone number of the jurisdiction representative responsible for administering the contract

Additionally, please provide at least one municipal citation for service transitions from another hauling company, including a brief description of the old and new services, and service transition dates, as well as the information listed in i. to vii. above.

5.c Information Regarding Past and Pending Litigation

Describe all civil legal actions with government agencies now pending or which have occurred in the past ten years with potential liability or actual damages greater than \$50,000, and all criminal legal actions now pending or that have occurred in the past 10 years against:

- i The key personnel described in Section 5.d
- ii. The owners and officers of the company
- ii The entity submitting the proposal
- iii Any parent or affiliated company for actions filed in the State of California (for affiliates, proposer may limit disclosures of non-criminal matters to those in the Los Angeles County area.)

5.d Key Personnel

Identify and describe the qualifications and experience the City can expect of the key personnel your company would assign to the City. Provide a brief biographical description of the proposed management team members that will fill these described jobs, specifically including the government and service liaisons per Sections 4.2.5 and 4.2.6 of agreement. Indicate the office locations for each key person assigned to the franchise.

5.e Financial Information

Initially, proposers must provide the following financial information in the proposal for the proposer or, if a corporate guaranty is to be provided, for the guarantor:

- i The type of financial statements produced (e.g. audited, reviewed or compiled) and the corporate entity that they represent (proposer or corporate guarantor).
- ii The most recently completed fiscal year for which financial statements are available.
- iii Annual revenue from the most recently completed financial statements.
- iv Current Assets to Current Liabilities ratio (current assets/current liabilities) from the most recently completed financial statements.
- v Total Liabilities to Total Assets ratio (total liabilities/total assets) from the most recently completed financial statements.

If selected for further consideration, proposers must be prepared to submit financial statements upon which this requested financial information is based within five (5) business days of the request for the most recently completed fiscal year. All such statements would need to be prepared and presented in accordance with Generally Accepted Accounting Principles applied on a consistent basis, and must include a statement by the chief financial officer of the proposer's company that there has been no material adverse change in conditions or operations, as reflected in the submitted balance sheets, income statements and cash flow statements, since the date on which they were prepared. If requested to submit financial statements, the proposer may submit a single copy of its financial statements stamped "confidential" with a written request that it be returned to the proposer after the proposal process is complete. The City will attempt to maintain the confidentiality of such a request, although confidentiality cannot be guaranteed.

Prior to award, the selected proposer will be required to submit "reviewed" or "audited" financial statements that demonstrate reasonable financial resources and stability to the satisfaction of the City. If awarded the contract, the financial statements shall remain with either the City or its consultant.

5.f Insurance

Proposer must submit evidence that the proposer either has, or is able to obtain, the insurance coverage required in the draft franchise agreement in Attachment 6, Section 8.4.

6. FACILITY DESCRIPTIONS REQUIRED IN PROPOSAL

6.a Transfer Facilities

For each transfer facility, if any, please identify the following:

- i The name and address of the facility.
- ii Statement regarding any relationship between the proposer and the facility owner/operator (if any).

- iii The price per ton for transfer and disposal of refuse
- iv Estimated date for start of operation, if facility is not currently in operation
- v. Indicate any solid waste facility capacity guarantees being offered.

6.b Processing Facilities

Proposers must identify in their proposals the processing facilities they plan to use for the:

- processing of the commingled recyclables
- processing of green waste
- processing of mixed waste
- transformation of refuse/waste-to-energy (if applicable)
- processing of food waste (pilot program)

For each facility, please identify the following:

- i The name and location of the facility.
- ii A statement regarding any relationship between the proposer and the facility owner/operator (if any).
- iii The material to be processed (green waste, commingled recyclables, mixed waste).
- iv The price per ton.
- v. Indicate any solid waste facility capacity guarantees being offered.

These four items must be included for each facility to be used.

6.c. Operating Facilities

Proposers must provide information about the operating facilities that they plan to use, including:

- i Yard address for equipment and personnel staging and arrangements for maintenance of equipment.
- ii Office address for customer service, public relations, billing, and franchise administration.
- iii Other operating facilities to be used in providing service under this agreement.

7. TRANSITION PLAN/PROPOSED SERVICE START DATE

The City anticipates a Proposition 218 hearing on April 5, 2011 to approve the new rates, assuming award of the contract in February 2011. The City anticipates needing from the successful proposer the detailed container sizes selected by single-family customers, assembled into an Excel spreadsheet to facilitate entry into the City's billing database. The Excel spreadsheet shall be updated and sent to the City at least every two days so that the

City will receive and be able to enter data into its billing system on an ongoing basis. Cards shall be mailed no sooner than April 20 (after April 19 Council Meeting), and shall be due by May 16, 2011, with all cart size and billing information provided to the City by May 18.

In consideration of this timeline, propose the following:

- i. Transition Plan - *Proposers should provide a transition schedule that demonstrates that your company has the ability to implement the services in accordance with the service start date proposed in 7ii below*, including meeting equipment, personnel, administration, maintenance, and public education requirements. Proposers should describe the assumptions regarding City staff's participation and (if appropriate) the current hauler's participation. City staff participation should be minimal.

Focus should be placed on tasks necessary to facilitate the transition to the tiered residential rate structure, including customer service. Specifically, proposers should indicate the length of time necessary after award of agreement to transition the Sand Section to automated collection, and provide the City with a listing of service levels for all single-family cart customers City-wide for billing purposes.

- ii. Service Start Date - The City has obtained an extension from its current hauler that provides some flexibility as to the start of service under the new agreement. *Proposers shall indicate whether they propose a July 1, 2011 or August 1, 2011 start date*, considering the City's timeline and proposer's transition plan proposed under 7i above.

8. AUTOMATED CARTS AND DESK-SIDE RECYCLING CONTAINERS

- i. Automated Carts - The City requires that carts include recycled content and be recyclable. Proposers should indicate:
 - a. the percentage of recycled content that shall be included in the carts; and,
 - b. the manufacturer of the carts proposed, along with a color brochure.
- ii. Desk-Side Recycling Containers - Proposers shall indicate the type of desk-side container to be offered to commercial customers and the current price for such a container (at contractor's cost per Section 3.2.2).

9. CUSTOMER SERVICE/CALL CENTER PROCEDURES

Customer service is very important to the City of Manhattan Beach. When a customer has a request for, or an issue with, solid waste service, the customer's first contact with the solid waste provider is the company's call center. Describe the company's call-in center procedures, including how each call is initially answered (i.e. phone tree, live operator). Indicate procedures taken to ensure that each Manhattan Beach caller will receive

information accurate to the City's contract. Describe procedures to satisfactorily respond to common customer complaints.

10. COLLECTION VEHICLE DESCRIPTIONS

Please provide the following information for each vehicle to be used under the collector agreement. If smaller, or otherwise unique, vehicles are proposed for use in the Sand Section, please identify those vehicles as such. Proposers should indicate proposed vehicle features that enhance safety and maneuverability on difficult-to-service streets.

1. Make
2. Model
3. Model Year
4. Type of fuel to be used (i.e. LNG, CNG)
5. Waste stream to be collected (i.e. cart, bin, roll-off)

11. VEHICLE TRACKING SYSTEM

Please describe your company's proposed vehicle tracking system. Information should include the manufacturer, what information shall be made available by the system on a real-time basis and as recorded, and how the City will be able to access this information. City has a preference for the Zonar vehicle tracking system that the City already uses, but this brand is not required See Section 3.9.2.E.4 of the agreement.

12. DOOR-TO-DOOR HOUSEHOLD HAZARDOUS WASTE COLLECTION PROGRAM (OPTIONAL SERVICE)

Proposers shall propose any additional program specifics and/or indicate where proposed door-to-door HHW program may differ from the example included in Exhibit 9, Section A of the draft agreement. Company should indicate any additional items it would collect under this program. Proposers are instructed to propose an annual rate for this program in Attachment 3-G.

13. PROCESSING OF ALL BIN REFUSE (OPTIONAL SERVICE)

Proposers are asked to propose an annual cost to process all bin refuse and recover a minimum of 3,549 tons (including the 1,365 already required to be recovered as part of the basic agreement per Section 3.5). See Exhibit 9, Section B of the draft agreement for further detail and Attachment 3-G to propose a percentage increase to bin rates. See Attachment 3-G.

14. C&D DEBRIS COLLECTION (OPTIONAL SERVICE)

Currently, the collection of construction and demolition debris and all temporary roll-off service is outside the scope of the agreement. In December 2009, the City issued a five-year notice to existing haulers that the City may make this service exclusive in or after December

2014. After that time, the City may opt to include all roll-off box and construction and demolition debris loads (including temporary bin loads) as exclusive services under its franchise agreement, with a minimum 70% diversion rate. Proposers are asked to propose rates for these services in Attachment 3-H. These rates will adjust in the same manner as permanent roll-off box service rates and temporary bin rates are adjusted. This does not oblige the City to incorporate these services into the exclusive agreement now or in the future. Nor does it prevent City from otherwise negotiating for these services.

15. OPTIONAL PROPOSAL ITEMS

Proposers may, but are not required to, respond to the following requests:

i. Additional Recyclable Materials - The agreement requires that certain materials be diverted. See Sections 3.2.1 and 3.2.2. If the proposer can commit to collecting and diverting additional materials, such as textiles, please indicate.

ii. Split Bins - The City would like to provide all customers, including space constrained commercial customers, with convenient recycling opportunities. If proposers are able to provide and service split (recycling/refuse) bins, please indicate the size(s) of split bins to be provided. The City anticipates that the cost to the rate payer would be equal to the rate for the same level of refuse service in a standard bin (i.e. a four-yard split bin would include two yards of refuse capacity and two yards of recycling capacity and be charged at the two yard refuse bin rate). Please confirm this rate structure or provide an alternative.

16. DIVERSION PERCENTAGE

Proposers are required to propose an overall diversion rate for material it collects under this agreement. Proposers must propose to divert a minimum of 44% of the material collected under this agreement; however, the City is very interested in increasing diversion and will favorably evaluate higher proposed diversion levels (without inclusion of third-party diversion). Proposers will be expected to contractually commit to reaching this diversion requirement. Attachment 4-E requires proposers to demonstrate how they plan to divert the sufficient waste to reach this diversion requirement. Contractor should describe any additional diversion programs proposed that are over and above those required by this RFP.

17. PUBLIC OUTREACH EFFORTS

Proposers shall indicate the minimum number of staff hours per year to be dedicated to fulfilling public outreach requirements for the following three sectors.

- i. Multi-Family Recycling Outreach Program, Section 4.3.6
- ii. Commercial Outreach Recognition Program, Section 4.3.7
- iii. School Recycling Outreach Program, Section 4.3.8

Note that the City will consider public outreach in evaluating proposals. Proposed hours will be added to the agreement to assist the City in ensuring sufficient effort is made in the area of

public education. Proposers may include any additional efforts (such as one-time, first year efforts), and examples of public outreach pieces applicable to agreement requirements that demonstrate the quality of the materials proposed to be used under this agreement. For additional efforts to be considered in the evaluation, proposer must agree to include such efforts as requirements under the agreement.

iv. Businesses in the community offer programs whereby the businesses will accept used items, including goods manufactured and/or sold by the business, thereby accepting extended producer responsibility. Please describe how proposer can assist in promoting take-back programs. The City is looking for creative ways to establish additional take-back programs in the community.

18. RATE ADJUSTMENT TERMS

- i. Propose a rate adjustment index/method for adjusting the disposal component of the rates. Proposers proposing to use third-party facilities where the City can easily verify gate rates paid by the contractor may propose a pass-through cost. Owners and operators of landfills and/or transfer facilities to be used are anticipated to indicate an index or a cap, or other method of confirming adjustment requests.
- ii. Indicate whether a cap on increases to the disposal or other rate components can be offered and, if so, describe the specific proposed terms. Provide information on facility ownership or long-term disposal or processing agreements that help support these caps.

Note to proposers: The landfill disposal component under the existing agreement has been fixed at \$34.00 per ton for the entire term of the agreement.

19. PROPOSAL ENHANCEMENTS

Provided that the proposer has submitted a proposal that meets all of the minimum requirements of this RFP, the proposer may also offer additional enhancements that exceed the requirements of this RFP and the franchise agreement. Any such enhancements shall be listed by number under this section in the RFP or it may be omitted from the proposal evaluation. Proposers should include the following information for each enhancement:

- i. The additional charge, if any, to City or ratepayer for enhancement.
- ii. How the enhancement exceeds RFP requirements.
- iii. How the enhancement benefits the City and how it would be incorporated into the contract service requirements or rate schedule.

SECTION VI - PROPOSAL EVALUATIONS

The proposal will be objectively evaluated based on criteria that may include, but is not limited to, the following factors.

PROPOSER'S QUALIFICATIONS

- ◆ General Experience – Demonstrated experience providing similar services to other jurisdictions, and experience of key personnel.
- ◆ Jurisdiction Satisfaction – Satisfaction of proposer references with services received, including but not limited to, implementation, customer services, reporting, assistance developing diversion programs, and working cooperatively with City staff. Customer service is of utmost importance to the City.

TECHNICAL QUALIFICATIONS

- ◆ Commitment to Environmental Sustainability – Demonstrated ability to proactively and creatively assist the City in meeting and/or exceeding its sustainable goals including a strong reduction in landfill tonnage, high hauler-diversion rates, and effective outreach programs. Ability to meet or exceed the diversion goals and programs proposed.
- ◆ Implementation Plan – Reasonableness of implementation schedule and ability to meet deadlines (i.e., equipment procurement schedules and personnel available), ability and resources to manage a service transition.
- ◆ Operations – Reasonableness of assumptions (e.g., number of routes).

EXCEPTIONS TO THE TERMS AND CONDITIONS

- ◆ Exceptions to the RFP and draft franchise agreement – Number and nature of the exceptions.

FINANCIAL RESOURCES

- ◆ Financial Stability – Comparison of additional revenue from this franchise to company's current revenue stream, financial stability of proposer based on its financial ratios.
- ◆ Insurance - Demonstrated ability of proposer to obtain adequate insurance.

COSTS

- ◆ Cost of service, as measured by rate revenues - Cost competitiveness relative to other proposals.
- ◆ Reasonableness of costs - Logically consistent relationship between costs and operational assumptions.

AWARD

To be considered, proposals must be complete and must conform to the requirements of this RFP as to form and content. The franchise will be awarded for the proposal that offer the greatest value to the City, within the budgetary limitations. The City, however, reserves the right to reject any or all proposals, to accept or reject any one or more items of a proposal, or to waive any minor irregularities or informalities in the proposal. It is anticipated that all services will be purchased. However, the City reserves the right to change such service descriptions prior to award.

Attachment 1

Proposal Outline

The following is an outline that proposers shall follow when completing their proposals. Under each section, proposer must include all information as outlined below, including all subheadings and subsections as identified in Section V. All information outlined in Section V is required to be addressed.

- 1) General Requirements
 - a) Title page
 - b) Transmittal letter
 - c) Table of contents
 - d) Anti-Collusion Affidavit (Attachment 5)
 - e) Executed signature page of RFP addenda
- 2) Rate Proposal Forms (Attachment 3)
- 3) Supporting Cost and Operating Data Worksheets (Attachment 4)
- 4) Exceptions to Terms of Franchise Agreement and Agreement Signature Page
- 5) Proposer Overview
 - a) Business Structure
 - b) Description of Proposer's Experience
 - c) Information Regarding Past and Pending Litigation
 - d) Key personnel
 - e) Financial information
 - f) Insurance
- 6) Facility Descriptions
 - a) Transfer facilities
 - b) Processing facilities
 - c) Operating facilities
- 7) Transition plan
- 8) Automated carts
- 9) Customer service/Call center procedures
- 10) Collection vehicle description
- 11) Vehicle tracking system
- 12) Door-to-door Household Hazardous Waste collection program (optional service)
- 13) Processing of all bin refuse (optional service)
- 14) Construction and demolition debris collection (optional service)
- 15) Optional proposal items
- 16) Diversion percentage
- 17) Public outreach efforts
- 18) Rate adjustment terms
- 19) Proposal enhancements

ATTACHMENT 2
EXISTING SERVICE DATA

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CART DISTRIBUTION AND NUMBER OF DWELLING UNITS
As of June 2010

Automated Cart Distribution

Row	Collection Day	Cart Size in Gallons (1)											
		Refuse			Recycling			Green Waste					
		35 gal	64 gal	96 gal	35 gal	64 gal	96 gal	35 gal	64 gal	96 gal			
1	Monday	217	2,221	31	500	1,846	33	237	1,856	57			
2	Tuesday	100	1,787	17	55	1,256	36	104	772	14			
3	Wednesday	222	2,546	130	376	2,236	69	222	1,872	420			
4	Thursday(2)	0	3	0	0	0	0	0	0	0			
5	Friday	<u>103</u>	<u>2,355</u>	<u>392</u>	<u>210</u>	<u>2,196</u>	<u>299</u>	<u>257</u>	<u>1,838</u>	<u>351</u>			
6	Total	642	8,912	570	1,141	7,534	437	820	6,338	842			
7	Grand Total		10,124			9,112			8,000				

(1) As reported by Waste Management 6/30/10.

(2) Three automated carts reported in the Sand Section. Sand Section is manually collected Tuesday and Thursday.

Number of Active Dwelling Units

Row	Service Type	Number of Dwelling Units Served
8	Total Residential Cart/Can Customers Billed (3)	13,849
9	Automated Cart Customer Count (2)	<u>9,525</u>
10	Estimated Manual Can Customers (4)	4,324

(2) City provided total residential cart customers as of June 2008.

(3) See Attachment 2-B.

(4) Based on difference between total cart/can customers and estimated cart customers.

RESIDENTIAL RATES AND NUMBER OF DWELLING UNITS

Residential Cart / Can Collection Contractor Rates and Service Levels

Row	Dwelling Units per Building	Standard Monthly Rate/Building (1)	# of Buildings (2)	# of Dwelling Units
1	1	\$12.02	10,918	10,918
2	2	\$22.83	950	1,900
3	3	\$33.05	183	549
4	4	\$43.27	91	364
5	5	\$53.46	3	15
6	6	\$63.69	10	60
7	7	\$73.90	5	35
8	8	\$84.12	1	8
9	9	\$94.33	0	0
10	Total		12,161	13,849

Residential Backyard Service Contractor Rates and Service Levels

Row	Dwelling Units per Building	Standard Monthly Rate/Building (1)	# of Buildings (2)(3)	# of Dwelling Units (3)
11	1	\$6.97	39	39
12	2	\$13.28	22	44
13	3	\$19.22	5	15
14	4	\$25.15	3	12
15	5	\$31.10	0	0
16	6	\$37.03	0	0
17	7	\$42.98	0	0
18	8	\$48.91	0	0
19	9	\$54.86	0	0
20	Total		69	110

(1) Rates effective July 1, 2009 to June 30, 2010.

(2) Building count provided by City as of October 2009

(3) Included in unit count for total building and dwelling units above.

ATTACHMENT 2

BIN AND COMMERCIAL CART SERVICE LEVELS
as of October 2009

Revenue-generating service levels listed below. Current estimated free City facility service levels are included in Attachment 2-L.

Row	Container Type/Size	Number of Container Collections per Week							Total Containers
		1	2	3	4	5	6	7	
1	Refuse Cart/Can	129	13	8	-	4	-	2	156
2	Refuse, size: 2 yards	86	53	24	4	2	4	7	180
3	Refuse, size: 3 yards	38	39	27	5	12	6	11	138
4	Refuse, size: 4 yards	16	18	23	7	14	11	9	98
5	Refuse, size: 6 yards	-	1	1	-	2	-	-	4
6	Refuse, Share bin size: 2 yards (1)	2	10	8	-	-	-	4	24
7	Refuse, Share bin size: 3 yards (1)	-	5	9	-	-	2	2	18
8	Refuse, Share bin size: 4 yards (1)	2	2	9	2	-	-	-	15
9	Refuse Compactor, size: 2 Cubic Yard	-	-	-	-	-	-	-	-
10	Refuse Compactor, size: 3 Cubic Yard	-	-	-	-	-	-	1	1
11	Refuse Compactor, size: 4 Cubic Yard	-	-	-	-	-	1	-	1
12	Refuse Compactor, size: 6 Cubic Yard	-	-	-	-	-	-	-	-
13	Recycle, Bin size: 2 Cubic Yard	19	5	4	3	-	1	-	32
14	Recycle, Bin size: 3 Cubic Yard	20	10	7	1	3	4	-	45
15	Recycle, Bin size: 4 Cubic Yard	20	7	4	2	1	22	-	56
16	Recycle, Bin size: 6 Cubic Yard	-	-	-	-	-	4	-	4
17	Recycle, Commercial Can size: 35 Gallon	51	1	-	3	-	5	1	61
18	Recycle, Commercial Can size: 64 Gallon	321	34	4	-	4	27	-	390
19	Recycle, Commercial Can size: 96 Gallon	183	33	16	9	3	20	-	264
20	Total Containers	887	231	144	36	45	107	37	1,487
21	Locking Bin				38				38

(1) - Some customers share bins and receive a split bill. Count is for bins, not for customers.

BIN AND COMMERCIAL CART RATES
July 1, 2009 - June 30, 2010

Row	Container Type/Size	Number of Collections per Week						
		1	2	3	4	5	6	7
1	Refuse Cart/Can (1)	\$ 13.15	\$ 26.30	\$ 39.45	\$ 52.60	\$ 65.75	\$ 78.90	\$ 92.05
2	Refuse, size: 2 yards	\$ 66.73	\$ 100.10	\$ 133.45	\$ 166.83	\$ 200.18	\$ 266.91	\$ 333.62
3	Refuse, size: 3 yards	\$ 85.72	\$ 126.99	\$ 169.31	\$ 211.64	\$ 253.96	\$ 338.60	\$ 423.26
4	Refuse, size: 4 yards	\$ 102.70	\$ 154.05	\$ 205.40	\$ 256.75	\$ 308.10	\$ 410.81	\$ 513.51
5	Refuse, size: 6 yards	\$ 132.03	\$ 198.04	\$ 264.07	\$ 330.09	\$ 396.11	\$ 528.15	\$ 660.17
6	Refuse Compactor, size: 2 Cubic Yard	\$ 113.95	\$ 170.86	\$ 227.80	\$ 287.78	\$ 341.72	\$ 455.67	\$ 569.70
7	Refuse Compactor, size: 3 Cubic Yard	\$ 145.30	\$ 217.96	\$ 292.65	\$ 363.18	\$ 435.78	\$ 581.08	\$ 726.37
8	Refuse Compactor, size: 4 Cubic Yard	\$ 176.88	\$ 265.27	\$ 353.70	\$ 442.08	\$ 530.56	\$ 707.37	\$ 884.33
9	Refuse Compactor, size: 6 Cubic Yard	\$ 228.21	\$ 342.30	\$ 456.43	\$ 570.50	\$ 684.60	\$ 912.81	\$ 1,141.02
10	Recycling - All Container Sizes	No charge						
11	Locking Bin	\$7.17/ month flat rate						

(1) Each additional can or weekly pickup is a multiple of \$13.15.

SPECIAL BIN SERVICE RATES
July 1, 2009 - June 30, 2010

Row	Service	Contractor Rate
1	Commercial Bulky Item Pickup - white goods with CFCs	\$ 15.00 per item
2	Commercial Bulky Item Pickup - all other items	\$ 10.00 per item
3	Additional Residential Bulky-Item - above three per year	\$ 20.00 per pick up
4	Emergency Collection Service - crew plus vehicle	\$ 70.00 per hour
5	Extra Pickups or Waste Placed for Collection in Excess of Capacity	
6	For Collection	\$ 17.92 per collection
7	Plus Per Yard Charge	\$ 4.52 per yard
8	Each Additional Pickup of Each City Litter Container	\$ 3.04 per collection
	Temporary Bin Rates (1)	Contractor Rate
		2 cubic yard 3 cubic yard 4 cubic yard 6 cubic yard
9	Pull Plus Delivery, 10 day rental	\$ 71.62 \$ 80.58 \$ 89.53 \$ 107.44
10	Each Additional Pull, 10 day rental	\$ 17.92 \$ 26.85 \$ 35.82 \$ 53.71
11	Rent per day beyond 10 days	\$ 1.79 \$ 1.79 \$ 1.79 \$ 1.79

(1) Hauler reports 116 first pulls and 193 additional pulls for 3 cubic yard temporary bins for calendar year 2009.

ATTACHMENT 2

ROLL-OFF RATES AND SERVICE LEVELS
for 12 Months Ended June 30, 2009

Row	Container/Service Type	Contractor Rate (1)(2)	# of Services Provided 12-Months Ended June 30, 2009
	<u>Service Component</u>		
1	Standard Box, any size	\$ 154.51 per load	678 pulls (3)
2	Compactor Box, any size	\$ 208.59 per load	138 pulls
3	Weekly Standard Roll-Off Box Rental (4)	\$ 27.68 per week	120 weeks
4	Weekly Compactor Roll-Off Box Rental (4)	\$ 37.27 per week	12 weeks
5	<u>Roll-off Per Ton Refuse Disposal Charge</u>	\$ 34.00 per ton	3,083 tons (5)

(1) For permanent roll-off box service. Temporary roll-off box service is outside the scope of the contract.

(2) Rates July 1, 2009 to June 30, 2010.

(3) Includes 173 City service pulls provided at no additional charge.

(4) If customer has fewer than 3 pulls per month. Hauler reported \$45,000 in roll-off box rental revenue for 2009.

(5) Includes 1,214 City service tons provided at no additional charge.

TONNAGE
For the 12 Months Ended December 31, 2007

Tonnage Collected By Service	Jan-07	Feb-07	Mar-07	Apr-07	May-07	Jun-07	Jul-07	Aug-07	Sep-07	Oct-07	Nov-07	Dec-07	Yearly Totals
Commercial													
Landfilled	828.88	727.77	1,035.36	1,026.52	1,065.17	1,022.89	1,066.03	1,099.80	981.57	1,010.30	1,037.97	805.74	11,708.00
Recycle America	101.02	81.81	92.27	87.93	92.88	88.32	90.51	96.18	84.69	54.63	59.48	95.44	1,025.16
Green Waste	-	-	-	-	-	-	-	-	-	-	-	-	-
SERRF	249.54	247.61	9.48	-	-	-	-	-	-	-	-	193.38	700.01
Total Tonnage Collected	1,179.44	1,057.19	1,137.11	1,114.45	1,158.05	1,111.21	1,156.54	1,195.98	1,066.26	1,064.93	1,097.45	1,094.56	13,433.17
Commercial Diversion %	29.7%	31.2%	8.9%	7.9%	8.0%	7.9%	7.8%	8.0%	7.9%	5.1%	5.4%	26.4%	12.8%
Residential													
Landfilled	1,176.73	687.99	800.01	757.72	1,160.04	1,76.00	352.09	1,223.99	1,039.26	1,191.71	1,215.71	1,105.83	10,887.08
Residual RAA, Recycling	89.95	73.17	78.72	74.42	85.10	77.98	80.13	85.30	72.99	59.70	95.37	91.48	964.31
Residual Green Waste	19.47	23.84	25.12	16.88	29.00	30.56	12.88	50.61	43.38	22.60	206.90	37.96	519.20
Christmas Trees	-	-	-	-	-	-	-	-	-	-	-	-	-
E-Waste	0.28	0.20	0.08	0.11	0.11	0.11	-	0.11	0.03	-	0.04	0.03	1.09
Recycling	701.47	570.56	613.90	580.37	663.65	608.09	624.85	665.21	569.20	465.55	743.71	713.37	7,519.93
Green Waste-Puente Hills	390.32	254.48	298.47	-	-	-	-	-	-	-	-	-	943.27
Green Waste-WM Simi Valley	-	-	-	355.46	368.96	278.54	-	-	-	65.60	-	-	1,068.56
Green Waste-WM Bradley LF	-	-	-	-	-	82.13	-	-	-	100.00	-	232.52	414.65
Green Waste-GMI	-	-	-	-	-	-	340.09	411.26	330.42	167.65	89.01	-	1,338.43
Commerce Burn Plant	-	-	291.02	-	234.63	252.37	461.42	-	-	-	-	-	1,239.44
SERRF	-	296.40	20.57	308.40	251.06	751.64	397.22	-	-	-	-	-	2,025.29
Total Tonnage Collected	2,378.22	1,906.64	2,127.89	2,093.36	2,792.55	2,257.42	2,268.68	2,436.48	2,055.28	1,972.81	2,450.74	2,181.19	26,921.25
Residential Diversion %	45.9%	58.8%	57.5%	59.4%	54.4%	87.4%	80.4%	44.2%	43.8%	35.4%	38.1%	43.4%	54.0%
Roll-off Service(1)													
Landfilled (through T/S)	506.61	348.72	375.11	382.38	366.91	403.39	344.60	422.38	367.95	361.95	391.18	335.73	4,606.91
Smurfit	6.49	-	-	1.64	-	-	-	5.14	-	-	-	5.30	18.57
Total Tonnage Collected	506.61	355.21	375.11	384.02	366.91	403.39	344.60	422.38	373.09	361.95	391.18	341.03	4,625.48
Roll-off Diversion %	0.0%	1.8%	0.0%	0.4%	0.0%	0.0%	0.0%	0.0%	1.4%	0.0%	0.0%	1.6%	0.4%
Total Tonnage Collected (All Services)													
Landfilled	2,621.64	1,861.49	2,314.32	2,257.92	2,706.22	1,710.82	1,855.73	2,882.08	2,505.15	2,646.26	2,947.13	2,376.74	28,685.50
Recycled	802.77	652.57	706.25	668.41	756.64	696.52	715.36	761.50	653.92	520.18	803.23	808.84	8,546.18
Green Waste(Puente Hills)	390.32	254.48	298.47	-	-	-	-	-	-	-	-	-	943.27
Green Waste(Simi Valley)	-	-	-	355.46	368.96	278.54	-	-	-	65.60	-	-	1,068.56
Green Waste(Bradley)	-	-	-	-	-	82.13	-	-	-	100.00	-	232.52	414.65
Green Waste(GMI)	-	-	-	-	-	-	340.09	411.26	330.42	167.65	89.01	-	1,338.43
Commerce Burn Plant	-	-	291.02	-	234.63	252.37	461.42	-	-	-	-	-	1,239.44
SERRF	249.54	544.01	30.05	308.40	251.06	751.64	397.22	-	-	-	-	193.38	2,725.30
Other Diversion	-	6.49	-	1.64	-	-	-	-	5.14	-	-	5.30	18.57
Total Tons Collected	4,064.27	3,319.04	3,640.11	3,593.83	4,317.51	3,772.02	3,769.82	4,054.84	3,494.63	3,399.69	3,939.37	3,616.78	44,979.90
Total Tons Diverted	1,442.63	1,457.55	1,325.79	1,333.91	1,611.29	2,061.20	1,914.09	1,172.76	989.48	753.43	992.24	1,240.01	16,294.40
Total Diversion % All Services	35.5%	43.9%	36.4%	37.1%	37.3%	54.6%	50.8%	28.9%	28.3%	22.2%	25.2%	34.3%	36.2%
Total Transformation Tonnage	249.54	544.01	321.07	308.40	485.69	1,004.01	858.64	-	-	-	-	193.38	3,964.74
Total Transformation Div Credit*	6.1%	16.4%	8.8%	8.6%	11.2%	26.6%	22.8%	0.0%	0.0%	0.0%	0.0%	5.3%	8.8%

(1) Waste Management also reported collecting an additional 651 tons sent to C&D facilities in 2007. This tonnage is not included above, as C&D debris collection is not exclusive under this agreement.

**TONNAGE
For the 12 Months Ended December 31, 2008**

Commercial	Jan-08 Tonnage	Feb-08 Tonnage	Mar-08 Tonnage	Apr-08 Tonnage	May-08 Tonnage	Jun-08 Tonnage	Jul-08 Tonnage	Aug-08 Tonnage	Sep-08 Tonnage	Oct-08 Tonnage	Nov-08 Tonnage	Dec-08 Tonnage	Yearly Totals
Landfilled	-	94719	88941	96025	99826	99254	1,033,90	98219	99238	96792	90380	95823	10,726,07
Recycle America	93.83	82,856	87,09	84,09	91,63	89,20	91,89	86,19	85,00	86,09	89,56	106,73	1,074,16
SERRE	1,010.40	-	-	-	-	-	-	-	-	-	10,99	-	1,021,39
Other Diversion	-	-	-	-	1.19	-	-	-	-	-	-	-	1.19
Total Tonnage Collected	1,104.23	1,030.05	1,076.50	1,044.34	1,091.08	1,081.74	1,125.79	1,068.38	1,077.38	1,054.01	1,004.35	1,064.96	12,822.81
Commercial Diversion %	100.0%	8.0%	8.1%	8.1%	8.5%	8.2%	8.2%	8.1%	7.9%	8.2%	10.0%	10.0%	16.4%
Residential													
Landfilled	-	95642	87647	1,03678	96679	56176	83484	58361	1,06611	1,06068	96427	1,10309	10,010.82
Residual RA A, Recycling	66.84	56,30	56,13	58,65	59,03	58,59	60,17	52,91	57,44	60,08	56,00	70,49	712.63
Residual Green Waste	47.52	72,65	21,92	44,56	16,74	7,57	-	4,95	6,86	2,53	-	-	225.30
Christmas Trees	3.83	-	-	-	-	-	-	-	-	-	-	-	3.83
E-Waste	0.06	0.13	0.10	0.10	0.10	-	-	0.05	0.01	-	-	-	0.55
Recycling-WMRA	720.46	606,79	604,96	632,18	636,25	631,51	648,58	570,24	619,16	647,60	603,63	759,80	7,681.16
Green Waste-WM Bradley LF	293.09	250,07	337,68	330,97	408,03	387,18	453,14	412,73	405,43	394,75	351,24	296,10	4,320.41
SERRE	1,161.76	21,20	119,77	-	121,86	447,06	335,70	436,61	5,02	-	-	-	2,648.98
Total Tonnage Collected	2,293.56	1,963.56	2,017.03	2,103.24	2,208.80	2,093.67	2,332.43	2,061.10	2,160.03	2,165.64	1,975.14	2,229.48	25,603.68
Residential Diversion %	94.8%	44.7%	52.7%	45.8%	52.8%	70.0%	61.6%	68.9%	47.7%	48.1%	48.3%	47.4%	57.2%
Roll-off Services(1)													
Landfilled (through T/S)	244.55	257,52	282,92	273,07	273,45	257,72	288,45	299,64	266,77	309,22	256,13	311,47	3,320.91
SERRE	118.48	-	-	-	-	-	-	-	-	-	-	-	118.48
Recycled	-	-	0.54	-	-	-	-	-	-	-	-	-	0.54
Total Tonnage Collected	363.03	257.52	283.46	273.07	273.45	257.72	288.45	299.64	266.77	309.22	256.13	311.47	3,439.93
Roll-off Diversion %	32.6%	0.0%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	3.5%
Total Tonnage Collected (All Services)													
Landfilled	358.91	2,290.08	2,226.85	2,373.31	2,214.27	1,878.18	2,217.36	1,923.30	2,389.56	2,400.43	2,180.20	2,443.28	24,995.73
Recycled	814.35	689,78	692,15	716,37	727,98	720,71	740,47	656,48	704,17	733,69	693,19	866,53	8,755.87
Green Waste(Puente Hills)	3.83	-	-	-	-	-	-	-	-	-	-	-	3.83
Green Waste(Bradley)	293.09	250,07	337,68	330,97	408,03	387,18	453,14	412,73	405,43	394,75	351,24	296,10	4,320.41
SERRE	2,290.64	21,20	119,77	-	121,86	447,06	335,70	436,61	5,02	-	10,99	-	3,788.85
Other Diversion	-	-	0.54	-	1.19	-	-	-	-	-	-	-	1.73
Total Tons Collected	3,760.82	3,251.13	3,576.99	3,420.65	3,573.33	3,433.13	3,746.67	3,429.12	3,504.18	3,528.87	3,235.62	3,605.91	41,866.42
Total Tons Diverted	3,401.91	961.05	1,150.14	1,047.34	1,259.06	1,554.95	1,529.31	1,505.82	1,114.62	1,128.44	1,055.42	1,162.63	16,870.69
Diversion % All Services	90.5%	29.6%	34.1%	30.6%	35.2%	45.3%	40.8%	43.9%	31.8%	32.0%	32.6%	32.2%	40.3%
Total Transformation Tonnage	2,290.64	21,20	119,77	-	121,86	447,06	335,70	436,61	5,02	-	10,99	-	3,788.85
Total Transformation Div Credit*	60.9%	0.7%	3.5%	0.0%	3.4%	13.0%	9.0%	12.7%	0.1%	0.0%	0.3%	0.0%	9.0%

(1) Waste Management also reported collecting an additional 392 tons sent to C&D facilities in 2008. This tonnage is not included above, as C&D debris collection is not exclusive under this agreement.

ROUTES AND ROUTE HOURS
As of January 2010

Row	Truck Type	# of Truck Routes							Crew Size (1 or 2 persons)	Hours Per Route per Day (1)
		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday		
1	Automated Refuse	3	1	3	-	3	-	-	1	11.5
2	Automated Recycling	3	1	3	-	3	-	-	1	12.0
3	Automated Green Waste	2	2	2	-	2	-	-	1	10.0
4	Manual Refuse	-	2	-	3	-	-	-	1	12.0
5	Manual Recycling	-	2	-	3	-	-	-	1	12.0
6	Bin Refuse (3)	2	2	2	2	2	1	1	2	12.0
7	Bin Recycling	1	1	1	1	1	1	-	1	10.0
8	Burro Vehicle/Strand (2)	1	1	-	1	1	1	1	1	3.0
9	Roll-Off	1	1	1	1	1	1	-	1	6.0
10	Total Routes	13	13	12	11	13	3	2		

(1) For example, 8, 9 or 10 hour days.

(2) Burro truck services Strand and City litter containers.

(3) No scout vehicles are used. However, the hauler reports using two crew on these routes due to alleys, hills and long roll-outs.

RATE REVENUE
for 12-Month Period Ended June 30, 2009

Row	Month	Residential Revenue - City Billed	Commercial Revenue - City Billed	Permanent & Temporary Roll-off - Hauler Billed	Commercial Temporary Bins - Hauler Billed	Total Revenue
1	July 2008	\$ 184,894	\$ 116,795	\$ 20,904	\$ 3,983	\$ 326,576
2	August 2008	\$ 187,302	\$ 116,713	\$ 21,137	\$ 3,070	\$ 328,222
3	September 2008	\$ 184,894	\$ 116,795	\$ 21,326	\$ 2,172	\$ 325,187
4	October 2008	\$ 187,560	\$ 118,208	\$ 23,629	\$ 4,309	\$ 333,706
5	November 2008	\$ 185,000	\$ 118,232	\$ 23,091	\$ 2,067	\$ 328,390
6	December 2008	\$ 187,363	\$ 117,407	\$ 25,459	\$ 3,606	\$ 333,835
7	January 2009	\$ 185,363	\$ 116,677	\$ 21,195	\$ 1,500	\$ 324,735
8	February 2009	\$ 188,122	\$ 115,710	\$ 21,163	\$ 1,688	\$ 326,683
9	March 2009	\$ 185,341	\$ 117,178	\$ 20,382	\$ 2,325	\$ 325,226
10	April 2009	\$ 187,926	\$ 116,000	\$ 21,801	\$ 1,918	\$ 327,645
11	May 2009	\$ 185,853	\$ 115,332	\$ 27,177	\$ 1,937	\$ 330,299
12	June 2009	\$ 198,525	\$ 104,779	\$ 27,318	\$ 2,741	\$ 333,363
13	Total Revenue July 2008 - June 2009	\$ 2,248,143	\$ 1,389,826	\$ 274,582	\$ 31,316	\$ 3,943,867
14	Administrative Fee Retained by City for FY 2009	\$ 330,586	\$ 204,372	\$ -	\$ -	\$ 534,958
15	Total Remitted to /Retained by Contractor FY 2009	\$ 1,917,557	\$ 1,185,454	\$ 274,582	\$ 31,316	\$ 3,408,909

ATTACHMENT 2

CITY FACILITIES
as of October 2009

The following services are not included in the service counts in Attachment 2-C. Services are included in Attachment 2-F as indicated in that attachment.

Row	NAME/LOCATIONS	WASTE TYPE	# CONTAINERS	CONTAINER SIZE	PU'S/WK
1	Fire Station #2	Refuse	1	4yd	1
2	Fire Station #2	Recycling	2	64gal	1
3	Manhattan Bch City Yard	Refuse	2	3yd	2
4	Manhattan Bch City Yard	Refuse	1	4yd	2
5	Manhattan Bch City Yard	Recycling	2	4yd	1
6	Manhattan Bch City Yard	Recycling	1	96gal	1
7	Manhattan Bch City Yard	Recycling	1	2yd	1
8	MB Fire / Police	Refuse	1	4yd	5
9	Live Oak Park Recreation	Refuse	1	2yd	3
10	Live Oak Park	Refuse	1	4yd	3
11	Live Oak Baseball Field	Refuse	1	3yd	3
12	Joslyn Center	Refuse	1	4yd	2
13	Manhattan Bch Yard	Refuse	1	25yd	2
14	Sand Dune Park	Refuse	1	3yd	3
15	Manhattan Beach Pier	Refuse	1	3yd	6
16	Manhattan Hts Com Bldg	Refuse	1	3yd	1
17	Polliwog Park	Refuse	2	4yd	3
18	Manhattan Heights Park	Refuse	1	3yd	2
19	Marine Park	Refuse	1	6yd	2
20	MB 1400 Parkway Dr	Refuse	1	4yd	1
21	New Marine Park	Refuse	1	3yd	1
22	City street litter containers	See Attachment 2-P			

CITY-SPONSORED EVENTS

The following are estimates of the service levels required at recent events. Each event is annual unless noted otherwise. The service levels may vary over time and may be higher, with no additional compensation provided. Franchisee will be expected to focus on recycling at such events.

Row	Event	Solid Waste Services Typically Provided at Past Events (# and size of refuse and recycling containers, event boxes, etc.)	Event Boxes and Liners	Solid Waste Collection Containers (1)
1	Earth Day Fair	Event Boxes: 100 trash, 100 recycling... Liners: 600		
2	Family Campout	Event Boxes: 20 trash, 20 recycling... Liners: 60		
3	Fishing Derby	Event Boxes: 10 trash, 10 recycle... Liners: 40		
4	Concerts in the Park (11 weeks)	Event Boxes: 50 trash, 50 recycle... Liners: 300		
5	Tennis Tournament	Event Boxes: 30 trash, 30 recycle... Liners: 60		
6	Sand Castle Design Contest	Event Boxes: 10 trash, 10 recycle... Liners: 40		
7	Employee Picnic	Event Boxes: 15 trash, 15 recycle... Liners: 30		
8	Polliwog Movie in the Park	Event Boxes: 20 trash, 20 recycle... Liners: 80		
9	Pet Appreciation Expo	Event Boxes: 20 trash, 20 recycle... Liners: 80		
10	6-Man Volleyball Tournament & Surf Festival (2)	Event Boxes: 150 trash, 150 recycle... Liners: 1200		(2) 40 Yard trash, (1) 25 Yard white recycle
11	Halloween Carnival	Event Boxes: 15 trash, 15 recycle... Liners: 30		
12	Downtown Open House/Pier Lighting Ceremony	Event Boxes: 50 trash, 50 recycle... Liners: 200		
13	Pier Fireworks Show	Event Boxes: 75 trash, 75 recycle... Liners: 250		(1) 30 Yard trash, (2) 4 Yard white recycle bins with lock
14	Family Crafts Night	Event Boxes: 10 trash, 10 recycle... Liners: 40		
15	Cultural Arts Fair	Event Boxes: 30 trash, 30 recycle... Liners: 60		(1) 10 Yard trash, (1) 6 Yard white recycle bin
16	Senior Health Fair	Event Boxes: 15 trash, 15 recycle... Liners: 30		
17	2012 City of MB Centennial Celebrations	One time event - No estimate available		

(1) Due to space constraints, City crews often collect from event boxes and transport to park containers or City yard containers, which may require hauler to provide extra collections from City facilities during and after events.

(2) 2009 data provided. This event may require a second 25-yard recycling roll-off box next year, and additional refuse and recycling containers due to anticipated event growth.

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of collection and proper processing or disposal by Company on an annual basis.

Row	Item	Annual Quantity Disposed
1	City facility batteries only	apx. 1,000 pounds
2	Circuit Boards	(1) 32 gallon container
3	F-40 Lamps	870-900
4	F-60 Lamps	25-30
5	F-96 Lamps	25-30
6	HID Lamps	50-60
7	Printer Cartridges	Unknown
8	Toner	Unknown
9	Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
10	(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
11	(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
12	(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
13	(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
14	(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
15	(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
16	(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 lbs. per drum)
17	(Garage) Tires	400
18	(Garage) Batteries (Automotive/Industrial)**	20
19	Miscellaneous liquids	(2) 55 gallon drums
20	(Streets Division) Aerosol Sprays	Apx. 60 cans per year
21	Paint - low VOC	Apx. 200-250 pails per year

ACCOUNTS WITH MULTIPLE DAILY PICKUPS

The following accounts were reported as receiving multiple daily pickups. The customers will be charged based on the number of containers and pickups that would be necessary to accomplish the same level of service if pickups were once per day. For example, one container picked up twice per day, seven days per week will be charged as though the customer had two containers being collected seven days per week.

Row	Customer	Reported Service Level
1	Manhattan Village, 157-103916	2-3 yd 7x week, 2x per day
2	Manhattan Village, 157-112968	1-4yd 7x week, 2x per day
3	Manhattan Village, 157-6621	1-3yd 7x week, 2x per day
4	Manhattan Village	all recycle containers, 2x per day (serviced at no charge under new agreement)
5	Hawthorn Victory 157-6517	1-4yd 6x week, 2x per day
6	Rockfish LLC 157-6499,	1-2yd 6x week, 2x per day
7	Grandview Elementary 157-6604	1-6yd, 3x week, 2x per day
8	Manhattan Beach Creamery, 157-96490	3-32 gallon 7x week
9	Manhattan Beach Creamery, 157-96490	1-32 gallon 2x per day on Saturday and Sunday
10	Mangiamo, 157-6502	5-32 gallon can Tuesday, Thursday, Saturday and Sunday
11	Mangiamo, 157-6502	4-32 galon cans on Friday only
12	Starbucks, 157-6367	1-3yd 7x week, 2x per day
13	Shellbeck Tavern, 157-6497	1-32 gallon can T-W-Th-F
14	Shellbeck Tavern, 157-6497	5-32 gallon 3x per day on Monday, Saturday and Sunday

CITY STREET AND PARK LITTER CONTAINER PICKUP SCHEDULE

The following is a list of existing City litter containers, followed by the current estimated collection frequency and days of collection, and container style, if available. Contractor will be expected to collect from containers more frequently if necessary to prevent overflow.

LOCATION	CURRENT MINIMUM PICKUP FREQUENCY	SEASONAL CHANGES	TYPE	Cement W/Plastic Lid (Refuse)	Cement Round (Recycle)	Cement With Tile no Lid	Cement Castle Shape trash and recycling	Not Identified
Pier	Tues-Fri	Mon-Sun	Trash				14	
Pier	Tues-Fri	Mon-Sun	Trash/Recycling					1
Beach S/o Pier	once/weekday, twice daily/weekend & holidays	Mon-Sun	Trash				1	1
Beach S/o Pier	once/weekday, twice daily/weekend & holidays	Mon-Sun	Trash					1
Beach between 11th St & MBB	once/weekday, twice daily/weekend & holidays	Mon-Sun	Trash					1
Beach N/o Pier	once/weekday, twice daily/weekend & holidays	Mon-Sun	Trash					1
Beach between MBB & 12th St	once/weekday, twice daily/weekend & holidays	Mon-Sun	Trash					1
Beach between MBB & 12th St	once/weekday, twice daily/weekend & holidays	Mon-Sun	Recycle					1
Beach between MBB & 12th St	once/weekday, twice daily/weekend & holidays	Mon-Sun	Recycle					1
Beach between MBB & 12th St	once/weekday, twice daily/weekend & holidays	Mon-Sun	Trash					1
S/o MBB W/o Poinsettia	Thursday	Mon-Sun	Recycle	1				
S/o MBB W/o Sepulveda	Thursday	Mon-Sun	Recycle	1				
N/s MBB W/o Sepulveda	Thursday	Mon-Sun	Recycle	1				
N/s MBB W/o Sepulveda	Thursday	Mon-Sun	Recycle	1				
W/s Sepulveda S/o MBB	Thursday	Mon-Sun	Recycle	1				
W/s Sepulveda S/o MBB	Thursday	Mon-Sun	Trash	1				
S/s MBB E/o Sepulveda	Thursday	Mon-Sun	Recycle	1				
S/s MBB E/o Sepulveda	Thursday	Mon-Sun	Recycle	1				
W/s Sepulveda between 10th St & 11th St	Thursday	Mon-Sun	Recycle	1				
W/s Sepulveda between 10th St & 11th St	Thursday	Mon-Sun	Recycle	1				
W/s Sepulveda N/o 8th St	Thursday	Mon-Sun	Recycle	1				
W/s Sepulveda N/o 8th St	Thursday	Mon-Sun	Recycle	1				
E/s Sepulveda S/o 8th St	Thursday	Mon-Sun	Recycle	1				
W/s Sepulveda N/o 2nd St	Thursday	Mon-Sun	Recycle	1				
W/s Sepulveda N/o 2nd St	Thursday	Mon-Sun	Recycle	1				
E/s Sepulveda S/o 2nd St	Thursday	Mon-Sun	Recycle	1				
E/s Sepulveda S/o 2nd St	Thursday	Mon-Sun	Recycle	1				
W/s Kuhn Dr S/o Duncan	Friday	Mon-Sun	Recycle	1				
E/s Sepulveda N/o Longfellow	Friday	Mon-Sun	Recycle	1				
E/s Sepulveda N/o Longfellow	Friday	Mon-Sun	Recycle	1				
N/s Boundary Pl W/o Sepulveda	Friday	Mon-Sun	Recycle	1				
N/s Boundary Pl W/o Sepulveda	Friday	Mon-Sun	Recycle	1				
E/s Sepulveda N/o Artesia	Friday	Mon-Sun	Recycle	1				
E/s Sepulveda N/o Artesia	Friday	Mon-Sun	Recycle	1				
E/s Aviation N/o Artesia	Friday	Mon-Sun	Recycle	1				
8th Street Parquette	Friday	Mon-Sun	Recycle	1				
8th Street Parquette	Friday	Mon-Sun	Recycle	1				
S/s MBB W/o Aviation	Thur	Mon-Sun	Recycle	1				
E/s Rowell S/o 8th St	Friday	Mon-Sun	Recycle	1				
W/s Bell between 33rd St & 33rd Pl	Thur	Mon-Sun	Recycle	1				
S/s Rosecrans W/o Pacific	Tues	Mon-Sun	Recycle	1				
N/s 15th St W/o Valley	Wednesday	Mon-Sun	Recycle	1		1		
N/s 15th St W/o Valley	Wednesday	Mon-Sun	Recycle	1		1		
W/s Sepulveda S/o Valley	Wednesday	Mon-Sun	Recycle	1				1
W/s Sepulveda S/o Valley	Thurs	Mon-Sun	Recycle	1				
S/s Rosecrans W/o Sepulveda	Thurs	Mon-Sun	Recycle	1				
S/s Rosecrans W/o Sepulveda	Thurs	Mon-Sun	Recycle	1				
S/s Rosecrans W/o Walnut	Thurs	Mon-Sun	Recycle	1				
S/s Rosecrans E/o Alma	Thurs	Mon-Sun	Recycle	1				
S/s Rosecrans between Highland & Crest	Tues	Mon-Sun	Recycle	1			1	
E/s Highland S/o Rosecrans	Tues	Mon-Sun	Recycle	1				
N/s Rosecrans E/o Highland	Tues	Mon-Sun	Recycle	1				
S/s 38th St E/o Highland	Tues	Mon-Sun	Recycle	1				1
N/s Rosecrans E/o Highland	Tues	Mon-Sun	Recycle	1				
N/s Rosecrans E/o Highland	Monday - Sunday	Mon-Sun	Recycle	1				
S/s 38th Pl E/o Highland	Monday - Sunday	Mon-Sun	Recycle	1			1	

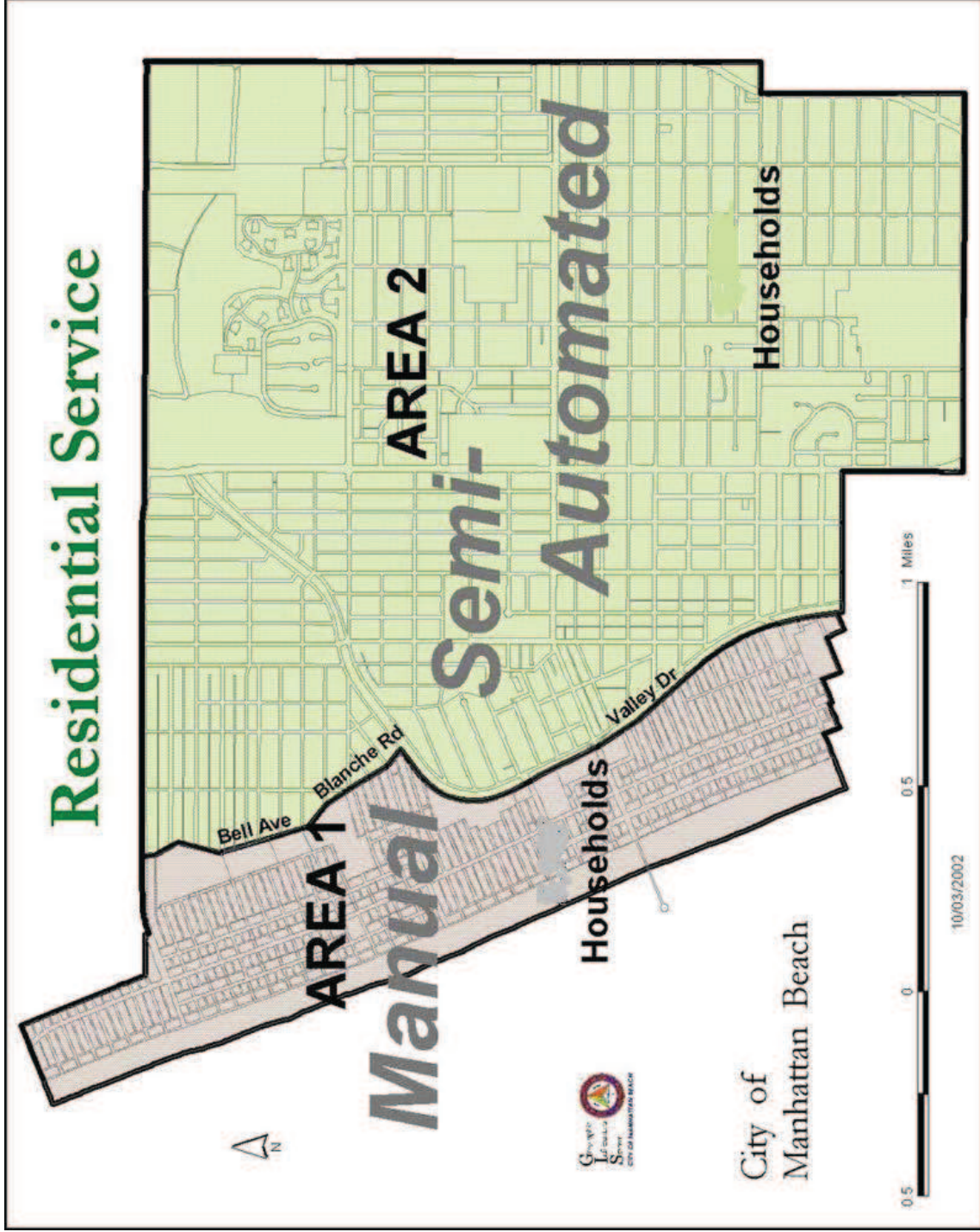
LOCATION	CURRENT MINIMUM PICKUP FREQUENCY	SEASONAL CHANGES	TYPE	Cement W/Plastic Lid (Refuse)	Cement Round (Recycle)	Cement With Tile no Lid	Cement Castle Shape trash and recycling	Not Identified
The Strand S/o 36th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand S/o 36th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 35th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
W/s Highland N/o 35th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand S/o Rosecrans	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand S/o Rosecrans	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o Rosecrans	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash	1				
Beach N/o Rosecrans	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash	1				
The Strand N/o 38th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 38th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach between 38th St & 39th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach between 38th St & 39th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 39th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 39th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 39th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 40th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 40th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand S/o 40th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach S/o 40th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 40th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Highland between 42nd St & 43rd St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
S/s 40th St E/o Highland	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 44th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 44th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 44th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 44th St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 43rd St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 43rd St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach S/o 43rd St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach S/o 43rd St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 42nd St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 42nd St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach S/o 42nd St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
The Strand N/o 41st St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach N/o 41st St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach S/o 41st St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
Beach S/o 41st St	Monday - Sunday - once/weekday, twice daily/weekend & holidays		Trash				1	
S/s Rosecrans W/o Redondo	Tuesday		Trash	1				
W/s Aviation S/o Rosecrans	Tuesday		Trash	1				
W/s Aviation N/o Marine	Tuesday		Recycle	1				
W/s Aviation N/o Marine	Tuesday		Recycle	1				
E/s Sepulveda N/o MBB	Tuesday		Recycle	1				
E/s Sepulveda N/o MBB	Tuesday		Recycle	1				
E/s Sepulveda N/o 18th St	Tuesday		Trash	1				
E/s Sepulveda N/o 18th St	Tuesday		Trash	1				
W/s Sepulveda & 18th St	Tuesday		Recycle	1				
W/s Sepulveda & 18th St	Tuesday		Recycle	1				
W/s Sepulveda S/o Marine	Tuesday		Recycle	1				
W/s Sepulveda S/o Marine	Tuesday		Recycle	1				
W/s Sepulveda N/o Marine	Tuesday		Recycle	1				
W/s Sepulveda N/o Marine	Tuesday		Recycle	1				
W/s Sepulveda S/o 30th St	Tuesday		Recycle	1				
W/s Sepulveda S/o 30th St	Tuesday		Recycle	1				
W/s Sepulveda S/o Rosecrans	Tuesday		Recycle	1				
W/s Sepulveda S/o Rosecrans	Tuesday		Recycle	1				
E/s Sepulveda N/o 30th St	Tuesday		Recycle	1				
S/s 36th St W/o Highland	Tues	Mon-Sun	Recycle				1	
W/s Highland N/o 33rd St	Tues	Mon-Sun	Recycle				1	
W/s Highland N/o 33rd St	Tues	Mon-Sun	Recycle				1	
E/s Highland between 32nd Pl & 33rd St	Tues	Mon-Sun	Recycle				1	
The Strand & 34th St		Mon-Sun	Trash				1	

LOCATION	CURRENT MINIMUM PICKUP FREQUENCY	SEASONAL CHANGES	TYPE	Cement W/Plastic Lid (Refuse)	Cement Round (Recycle)	Cement With Tile no Lid	Cement Castle Shape trash and recycling	Not Identified
The Strand & 33rd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand S/o 32nd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand S/o 31st St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand & 29th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand & 28th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand N/o 27th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand N/o 27th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
W/s Manhattan S/o 27th St	Tues	Mon-Sun	Trash				1	
W/s Highland N/o 26th St	Tues	Mon-Sun	Trash				1	
Deadend of 33rd St E/o Vista	Thursday		Trash	1				
Deadend of 34th St E/o Vista	Thursday		Trash	1				
W/s Highland S/o Marine Pl	Tues	Mon-Sun	Trash				1	
E/s Highland S/o Marine	Tues	Mon-Sun	Trash				1	
W/s Highland N/o 18th St	Tues	Mon-Sun	Trash				1	
E/s Highland between 17th Pl & 18th St	Tues-Fri	Mon-Sun	Trash				1	
Beach S/o 16th St	once/weekday, twice daily/weekend & holidays	Mon-Sun	Trash				1	
The Strand S/o 17th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand S/o 17th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand & 18th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand S/o 19th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand S/o 19th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand N/o 20th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand & 21st St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand S/o Marine	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand S/o 23rd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand N/o 23rd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand N/o 23rd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand N/o 23th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand & 26th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand & 26th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand & 24th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
The Strand between MBB & 12th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash				1	
S/s MBB E/o Ocean	Tues-Fri		Trash				1	
S/s MBB W/o Ocean	Tues-Fri		Recycle				1	
S/s MBB W/o Ocean	Tues-Fri		Trash				1	
E/s Ocean N/o 11th St	Tues-Fri		Trash				1	
S/s MBB W/o Manhattan	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Manhattan N/o 11th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
E/s Manhattan S/o 11th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
E/s Highland S/o 11th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Highland N/o 11th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
S/s MBB E/o Highland	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
N/s MBB W/o Highland	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Highland between MBB & Center Pl	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
N/s MBB	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
S/s MBB between Highland & Morningside	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
N/s MBB	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
N/s MBB	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
S/s MBB E/o Morningside	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
S/s MBB W/o Highland	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
N/s MBB E/o Manhattan	Thur		Trash	1				
S/s MBB E/o Manhattan	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
E/s Manhattan between MBB & Center Pl	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Manhattan between MBB & Center Pl	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		

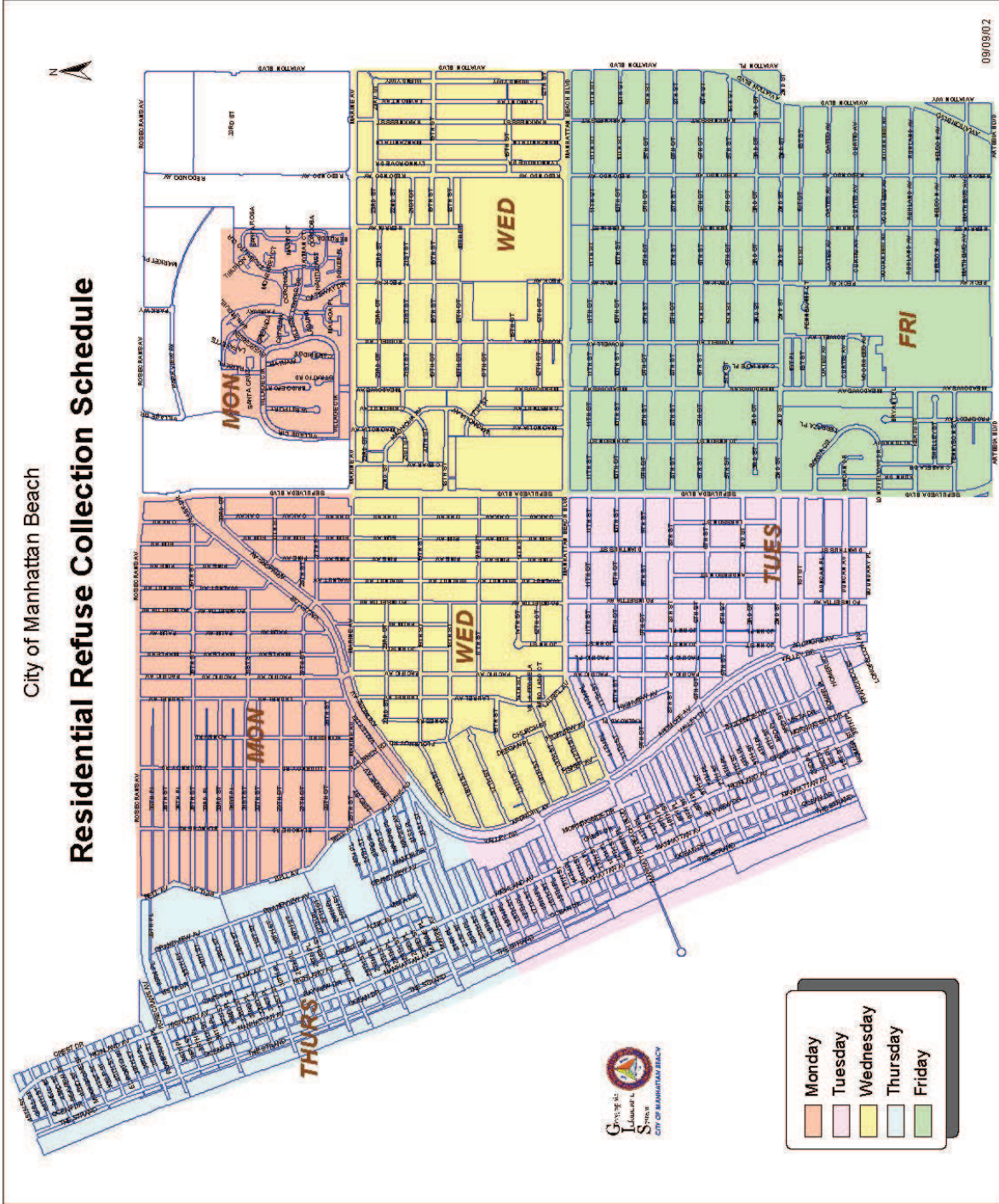
LOCATION	CURRENT MINIMUM PICKUP FREQUENCY	SEASONAL CHANGES	TYPE	Cement W/Plastic Lid (Refuse)	Cement Round (Recycle)	Cement With Tile no Lid	Cement Castle Shape trash and recycling	Not Identified
E/s Manhattan S/o 12th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Manhattan S/o 12th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Manhattan N/o 12th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Manhattan S/o 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Manhattan N/o 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Highland between Center Pl & 12th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
N/s 12th St E/o Highland	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
S/s 12th St E/o Highland	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
E/s Highland N/o 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Highland N/o 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Highland S/o 14th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
E/s Highland S/o 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 10th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 10th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 10th St & 11th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 11th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 11th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 11th St & MBB	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 11th St & MBB	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between MBB & 12th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 12th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 12th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 12th St & 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 12th St & 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 13th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 13th St & 14th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 13th St & 14th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 15th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 15th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
Beach S/o 14th St	once/weekday, twice daily/weekend & holidays		Trash			1		
Beach N/o 14th St	once/weekday, twice daily/weekend & holidays		Trash			1		
The Strand & 15th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 15th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
S/s 12th St W/o Morningside	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Morningside between 12th St & Center Pl	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
S/s 12th St W/o Morningside	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
E/s Highland S/o Center Pl	Tues-Thur-Fri-Sat-Sun	Mon-Sun	Trash			1		
E/s Manhattan N/o 10th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Manhattan S/o 10th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 9th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 9th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Bayview Dr S/o 9th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
N/s 9th St E/o Bayview Dr	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand S/o 8th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand S/o 8th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 7th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand & 7th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 6th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 6th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 5th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 5th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 4th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 4th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 3rd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 3rd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 2nd St & 3rd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand between 2nd St & 3rd St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
E/s Manhattan & 4th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
The Strand N/o 1st St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
N/s MBB W/o Valley	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		
W/s Manhattan N/o 26th St	Tues-Thur-Sat-Sun	Mon-Sun	Trash			1		

LOCATION	CURRENT MINIMUM PICKUP FREQUENCY	SEASONAL CHANGES	TYPE	Cement W/Plastic Lid (Refuse)	Cement Round (Recycle)	Cement With Tile no Lid	Cement Castle Shape trash and recycling	Not Identified
W/s Sepulveda S/o Rosecrans	Tues		Trash	1				
S/s Rosecrans W/o Blanche	Tues		Trash	1				
W/s Bell between 33rd St & 33rd Pl	Mon - Thur		Trash	1				
W/s Bell between 33rd Pl & 35th St	Mon - Thur		Trash	1				
W/s Aviation S/o MBB	Tues		Trash	1				
E/s Sepulveda S/o Duncan	Thur		Trash	1				
Postal Annex	once/weekday, twice daily/weekend & holidays		Trash/Recycle	1			2	
Live Oak Park	once/weekday, twice daily/weekend & holidays		Trash/Recycle	21	4			
Manhattan Beach Green Belt	once/weekday, twice daily/weekend & holidays		Trash/Recycle	31	1	1	4	
Manhattan Heights Park	once/weekday, twice daily/weekend & holidays		Trash/Recycle	8	1			
Manhattan Village Soccer Park	once/weekday, twice daily/weekend & holidays		Trash/Recycle	4	1			
Manhattan Village Soccer Field	once/weekday, twice daily/weekend & holidays		Trash/Recycle	5	3			
Marine Avenue Park	once/weekday, twice daily/weekend & holidays		Trash/Recycle	20	1			
Marine Sports Complex	once/weekday, twice daily/weekend & holidays		Recycle				11	
Bruce's Beach Park	once/weekday, twice daily/weekend & holidays		Trash/Recycle	2			2	
Pollack Park	once/weekday, twice daily/weekend & holidays		Trash/Recycle	49	2		10	
Public Works Facility	Mon - Fri		Trash/Recycle		6		1	
Sand Dune Park	once/weekday, twice daily/weekend & holidays		Trash	17				
Bell Avenue Right-of-Way	once/weekday, twice daily/weekend & holidays		Trash	4				
Live Oak Park & Marine Park Dog Runs	once/weekday, twice daily/weekend & holidays		Trash	1				
Begg Field North Diamond	once/weekday, twice daily/weekend & holidays		Trash/Recycle	1	1			
Center Field	once/weekday, twice daily/weekend & holidays		Trash/Recycle	5				
Grandview School	once/weekday, twice daily/weekend & holidays							1
Meadows School	once/weekday, twice daily/weekend & holidays		Trash/Recycle	1	1			
Pacific School	once/weekday, twice daily/weekend & holidays		Trash/Recycle	2	2			
Pennkamp School	once/weekday, twice daily/weekend & holidays		Trash/Recycle	2	2			
8th Street Parquette	once/weekday, twice daily/weekend & holidays		Trash	2				
Larsson Street Parquette	once/weekday, twice daily/weekend & holidays		Trash	2				
Block 35 Water Tower	once/weekday, twice daily/weekend & holidays		Trash	2				
Subtotal by Container Type				252	25	43	147	29
Total Containers			496					

MAP OF SAND SECTION



ROUTE MAP



CITY LITTER CONTAINER PICTURES



CITY LITTER CONTAINER PICTURES (continued)



CITY LITTER CONTAINER PICTURES (continued)



MANHATTAN BEACH SCHOOLS

Contractor is required to assist Manhattan Beach schools with public education and recycling efforts per Section 4.3.8 of the draft franchise agreement. Below are listed the Manhattan Beach School District schools and private schools anticipated to require assistance, with estimated student populations where available. Student populations may vary and additional schools may be added or deleted.

Row	School	Grade	Estimated Student Population
Manhattan Beach Unified School District - enrollment based upon May 28, 2010 Daily Enrollment Report			
1	Grand View School	K-5	718
2	Pacific School	K-5	655
3	Meadows School	K-5	496
4	Robinson School	K-5	410
5	Pennekamp School	K-5	573
6	Manhattan Beach Middle School	6-8	1312 (includes 5 home teach students)
7	Mira Costa High School	9-12	2382 (includes 75 home teach, independent study and SDC students)
8	MBUSD Enrollment Total		6,546
Private Schools - enrollment as reported on school websites			
9	American Martyrs Catholic Community	elementary	
10	Del Sol School	K-6	58
11	Mahattan Academy	preK-5	134
12	Montessori School of Manhattan Beach	elementary	
13	Mahattan Academy	high school	

ATTACHMENT 3
RATE PROPOSAL FORMS

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3-A	Summary of Proposed First-Year Rate Revenue
3-B	Proposed First-Year Rates - Single Family Cart Service
3-C	Proposed First-Year Rates and Revenue - Multi Family Cart Service
3-D	Proposed First-Year Rates - Bin and Commercial Cart Service
3-E	Proposed First-Year Bin and Commercial Cart Service Revenue
3-F	Proposed First-Year Roll-Off Box and Temporary Bin Rates and Revenue
3-G	Proposed Annual Revenue for Optional Services
3-H	Optional Construction and Demolition Debris Rates

SUMMARY OF PROPOSED FIRST-YEAR RATE REVENUE

Proposing Company:

Confirm that rate revenue is accurately reflected, based upon proposer's proposed rates.

Row	Service Category	Proposed First Year Annual Rate Revenue	Reference
1	Single Family Cart Service	To Be Determined*	
2	Multi Family Cart Service Rate Revenue	\$ -	Attach. 3-C, Row 19
3	Bin and Commercial Cart Service Rate Revenue	\$ -	Attach. 3-E, Row 15
4	Roll-Off Box and Temporary Bin Service Rate Revenue	\$ -	Attach. 3-F, Row 17
Row	Optional Services	Annual Revenue	Reference
5	Door-to-Door HHW Service Revenue	\$ -	Attach. 3-G, Row 1
6	Mixed Waste Processing of All Bin Waste Revenue	\$ -	Attach. 3-G, Row 2

* For proposal evaluation purposes, single family cart service rate revenues will be estimated by the City using the contractor's proposed rate, and the cart distribution based on the average container distribution estimated by proposers.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

PROPOSED FIRST-YEAR RATES - SINGLE FAMILY CART SERVICE

Proposing Company: _____

Provide rates in bold-outlined boxes. The other rates should automatically calculate. These rates shall apply to one-unit single family homes. See Attachment 4-A for annual revenue estimate.

Row	Service Category	Monthly Rate
1	Curbside Collection - 1x week, one refuse, recycling and green waste cart	
2	- 95-gallon refuse cart (1)	\$ -
3	- 64-gallon refuse cart - Base Rate	_____
4	- 35-gallon refuse cart (2)	\$ -
5	Extra Cart Services	
6	Backyard Service Charge Added to Curbside Rate (current estimate of 39 customers)	_____
7	Additional Refuse Cart Rates (for each refuse cart above one)	
8	- 95-gallon	\$8.00
9	- 64-gallon	\$6.00
10	- 35-gallon	\$4.00

- (1) 95-gallon refuse cart rate shall be set \$4.00 per month higher than the proposed 64-gallon rate.
- (2) 35-gallon refuse cart rate shall be set \$4.00 per month lower than the proposed 64-gallon rate.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

PROPOSED FIRST-YEAR RATES AND REVENUE - MULTI FAMILY CART SERVICE

Proposing Company: _____

Provide rates in bold-outlined boxes. The other rates should automatically calculate. The proposed rates are to be applied on a per unit basis only to residential customer with two or more units. Rates are not volume based. Customers with multiple refuse carts or customers that share refuse carts will be charged the same rate.

Proposed Multi Family Rates for Cart Customers with 2-9 Dwelling Units

Per Unit Monthly Rate for Unlimited Cart Service for Multi-Family Customers with 2-9 Dwelling Units:					
Row	Dwelling Units per Building	Standard Monthly Rate/Building	# of Buildings	Monthly Rate Revenue	Annual Rate Revenue
1	2	\$ -	950	\$ -	\$ -
2	3	\$ -	183	\$ -	\$ -
3	4	\$ -	91	\$ -	\$ -
4	5	\$ -	3	\$ -	\$ -
5	6	\$ -	10	\$ -	\$ -
6	7	\$ -	5	\$ -	\$ -
7	8	\$ -	1	\$ -	\$ -
8	9	\$ -	0	\$ -	\$ -
9	Total			\$ -	\$ -

Proposed Multi Family Rates for Backyard Service Customers with 2-9 Dwelling Units

Per Unit Monthly Surcharge for Backyard Service for Multi-Family Customers with 2-9 Dwelling Units (1):					
Row	Dwelling Units per Building	Standard Monthly Rate/Building	# of Buildings(2)	Monthly Rate Revenue	Annual Rate Revenue
10	2	\$ -	22	\$ -	\$ -
11	3	\$ -	5	\$ -	\$ -
12	4	\$ -	3	\$ -	\$ -
13	5	\$ -	0	\$ -	\$ -
14	6	\$ -	0	\$ -	\$ -
15	7	\$ -	0	\$ -	\$ -
16	8	\$ -	0	\$ -	\$ -
17	9	\$ -	0	\$ -	\$ -
18	Total			\$ -	\$ -
19	Total Annual Multi-Family Cart Rate Revenue			\$ -	\$ -

(1) Incremental surcharge for backyard service, to be charged in addition to monthly service rate.

(2) Included in unit count for total buildings above.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

PROPOSED FIRST-YEAR RATES - BIN AND COMMERCIAL CART SERVICE

Proposing Company: _____

Enter proposed rates in Bolded Boxes.

Proposed Rates

Row	Container Type/Size	Number of Collections per Week						
		1	2	3	4	5	6	7
1	Refuse Can							
2	35-gallon Cart (equal to can rate)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	64-gallon Cart (twice can rate)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4	95-gallon Cart (three times can rate)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	Refuse, size: 2 yards							
6	Refuse, size: 3 yards							
7	Refuse, size: 4 yards							
8	Refuse, size: 6 yards							
9	Refuse Compactor, size: 2 Cubic Yard							
10	Refuse Compactor, size: 3 Cubic Yard							
11	Refuse Compactor, size: 4 Cubic Yard							
12	Refuse Compactor, size: 6 Cubic Yard							

Service Levels (1)

Row	Container Type/Size	Number of Container Collections per Week							Total Containers
		1	2	3	4	5	6	7	
13	Refuse Can	129	13	8	-	4	-	2	156
14	35-gallon Cart (2)	-	-	-	-	-	-	-	-
15	64-gallon Cart (2)	-	-	-	-	-	-	-	-
16	95-gallon Cart (2)	-	-	-	-	-	-	-	-
17	Refuse, size: 2 yards	88	63	32	4	2	4	11	204
18	Refuse, size: 3 yards	38	44	36	5	12	8	13	156
19	Refuse, size: 4 yards	18	20	32	9	14	11	9	113
20	Refuse, size: 6 yards	-	1	1	-	2	-	-	4
21	Refuse Compactor, size: 2 Cubic Yard	-	-	-	-	-	-	-	-
22	Refuse Compactor, size: 3 Cubic Yard	-	-	-	-	-	-	1	1
23	Refuse Compactor, size: 4 Cubic Yard	-	-	-	-	-	1	-	1
24	Refuse Compactor, size: 6 Cubic Yard	-	-	-	-	-	-	-	-
25	Total Containers	273	141	109	18	34	24	36	635

(1) Revenue generating containers. Does not include city facility services provided at no additional charge.

(2) Cart count not available. May be included in can count.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

PROPOSED FIRST-YEAR BIN AND COMMERCIAL CART SERVICE REVENUE

Proposing Company: _____

Ensure revenue is correctly calculated on this sheet.

Bin and Commercial Cart Revenue

Row	Container Type/Size	Proposed Rate Revenue							Revenue - Total Containers
		1	2	3	4	5	6	7	
1	Refuse Cart/Can	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
2	35-gallon Cart	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
3	64-gallon Cart	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
4	95-gallon Cart	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
5	Refuse, size: 2 yards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
6	Refuse, size: 3 yards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
7	Refuse, size: 4 yards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
8	Refuse, size: 6 yards	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
9	Refuse Compactor, size: 2 Cubic Yard	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
10	Refuse Compactor, size: 3 Cubic Yard	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
11	Refuse Compactor, size: 4 Cubic Yard	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
12	Refuse Compactor, size: 6 Cubic Yard	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
13	Projected Monthly Revenue								\$ -
14	Months								12
15	Projected Annual Revenue								\$ -

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

PROPOSED FIRST-YEAR ROLL-OFF BOX AND TEMPORARY BIN RATES AND REVENUE

Proposed Revenue: _____

Enter proposed rates in bolded boxes.

Row	Container/Service Type	Contractor Rate	# of Services Provided 12-Months Ended June 30, 2009 (1)	Annual Proposed First Year Revenue
	<u>Service Component</u>			
1	Standard Box, any size	per load	505 pulls	\$ -
2	Compactor Box, any size	per load	138 pulls	\$ -
3	Weekly Standard Roll-Off Box Rental (2)	per week	30 weeks	\$ -
4	Weekly Compactor Roll-Off Box Rental (2)	per week	4 weeks	\$ -
5	<u>Roll-off Per Ton Refuse Disposal Charge</u>			
6	Refuse	per ton	1,869 tons	\$ -
7	Mixed Recyclables	per ton		
8	Green Waste	per ton		
9	Subtotal Roll-Off Box Service Rate Revenue			\$ -
	<u>Temporary Bin Rates</u>			
		Proposed Contractor Rate Per Pull(3)		
		2 cubic yard	4 cubic yard	6 cubic yard
10	Pull Plus Delivery, 10 day rental	\$ -	\$ -	\$ -
11	Each Additional Pull, 10 day rental	\$ -	\$ -	\$ -
		Annual Pulls (calendar year 2009)		
12	Pull Plus Delivery, 10 day rental	-	116	-
13	Each Additional Pull, 10 day rental	-	193	-
		Estimated First Year Contractor Rate Revenue		
14	Pull Plus Delivery, 10 day rental	\$ -	\$ -	\$ -
15	Each Additional Pull, 10 day rental	\$ -	\$ -	\$ -
16	Temporary Bin Rate Surcharge	\$ -	\$ -	\$ -
17	Total Annual Rate Revenue			\$ -

(1) For purposes of estimating proposed first year rate revenue, these service levels include an estimate of revenue-producing services. Service levels estimated in Attachment 2-F have been reduced above by City facilities service levels from Attachment 2-L.

(2) For permanent roll-off boxes that are not pulled at least 3 times per week.

(3) Propose 3 cubic yard rates. Other rates will calculate based upon the current ratio between such rates.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

PROPOSED ANNUAL REVENUE FOR OPTIONAL SERVICES

Proposing Company: _____

City may choose to implement one or more of the optional services listed below. Enter proposed revenue or percentage increase in bolded boxes. The rest of the table should calculate automatically. Confirm calculations.

Row	Optional Services	Proposed Costs/Rate Increase	Annual Proposed First Year Revenue	Comment
1	Door-to-Door Household Hazardous Waste Service	<div style="border: 2px solid black; width: 100px; height: 30px; margin-bottom: 5px;"></div> Total annual cost to service all residents.	\$ -	See Exhibit 9A of draft agreement and #10 on page 21 of RFP. Program is to provide unlimited service to single and multi-family customers.
2	Mixed Waste Processing of All Bin Waste	<div style="border: 2px solid black; width: 100px; height: 30px; margin-bottom: 5px;"></div> % increase to be applied to bin rates	\$ -	Proposed % increase to be applied to bin rates. See revenue estimated below (1). See Exhibit 9B of draft agreement and #11 on page 21 of RFP

(1) Estimated annual rate revenue to which percentage rate increase for mixed waste processing in Optional Service 2 above would be applied:

Projected Annual Bin and Commercial Cart Rate Revenue	\$ -
Less: Projected Annual Commercial Cart Rate Revenue	\$ -
Projected Annual Bin Rate Revenue	\$ -

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

OPTIONAL CONSTRUCTION AND DEMOLITION DEBRIS RATES

Proposed Revenue: _____

Enter proposed rates in bolded boxes.

Row	Container/Service Type	Contractor Rate
	Roll-Off Box Service	
	<u>Service Component</u>	
1	25 to 40 cubic yard roll-off box	<input type="text"/> per load
2	Low Boy (10 cubic yard) roll-off box	<input type="text"/> per load
	<u>Roll-off Per Ton Refuse Disposal/Processing Charge</u>	
3	Mixed Loads of C&D Debris	<input type="text"/> per ton
4	Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
	Temporary Bin Service (3 Cubic Yard)	
5	First dump, including delivery and disposal	<input type="text"/> per pull
6	Additional dumps, including disposal	<input type="text"/> per pull

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

ATTACHMENT 4
SUPPORTING COST AND OPERATING DATA WORKSHEETS

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4-A	Proposed Rate Revenue
4-B	Projected Revenue Requirement for First Twelve Months of Franchise Agreement
4-C	Projected Routes and Route Hours
4-D	Cost Component and Cost Weightings
4-E	Tonnage Diversion Plan

PROPOSED RATE REVENUE

Proposing Company: _____

Provide unit count assumptions in bold-outlined boxes. Monthly rates shall reference proposed rates on Attachment 3-B, rows 2- 4, row 6, and rows 8 - 10.

Row	Service Category	Monthly Rate	Count	Monthly Revenue	Annual Revenue
1	Single Family Cart Service				
2	<u>Curb-side Collection - 1x week, one refuse, recycling and green waste cart</u>				
3	- 95-gallon refuse cart (1)	\$ -	units	\$ -	\$ -
4	- 64-gallon refuse cart - Base Rate	\$ -	units	\$ -	\$ -
5	- 35-gallon refuse cart (2)	\$ -	units	\$ -	\$ -
6	Total Cart Customers (must equal 10,918 units)		- units		
8	<u>Backyard Service Charge</u>				
		\$ -	39 units	\$ -	\$ -
9	<u>Additional Refuse Cart Rates (for each refuse cart above one)</u>				
10	- 95-gallon	\$ 10.00	units	\$ -	\$ -
11	- 64-gallon	\$ 8.00	units	\$ -	\$ -
12	- 35-gallon	\$ 6.00	units	\$ -	\$ -
13	Total Single Family Cart Service Rate Revenue			\$ -	\$ -
14	Multi Family Cart Service Rate Revenue (referenced from Attachment 3-C, Row 19)				\$ -
15	Bin and Commercial Cart Service Rate Revenue (referenced from Attachment 3-E, Row 15)				\$ -
16	Roll-Off Box and Temporary Bin Service Rate Revenue (referenced from Attachment 3-F, Row 17)				\$ -
17	Total Annual Revenue				\$ -

(1) 95-gallon refuse cart rate shall be set \$4.00 per month higher than the proposed 64-gallon rate.

(2) 35-gallon refuse cart rate shall be set \$4.00 per month lower than the proposed 64-gallon rate.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

PROJECTED REVENUE REQUIREMENT FOR THE FIRST TWELVE MONTHS OF FRANCHISE AGREEMENT

Proposing Company: _____

Fill in boxes outlined in bold. Confirm automatic calculations.

Row		Automated Cart Service			Bin Service		Rolloff Service	Bulky Item Pickup, Holiday Trees, Abandoned Items, Special Events, Other	TOTAL ANNUAL REVENUE RQMT
		Refuse	Recyclables	Yard Waste	Refuse	Recyclables			
1	Operations								
2	Truck Operating Costs (a)							\$ -	
3	Transfer Station, Transport, MRF costs							\$ -	
4	Transformation Costs (WTE)							\$ -	
5	Greenwaste Processing/Disposal Costs							\$ -	
6	Landfill Disposal Costs							\$ -	
7	Container Depreciation/ Amortization Costs							\$ -	
8	Recyclable Material Sales Revenues (b)							\$ -	
9	Subtotal: Operations Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
10	General, Administrative and Profit								
11	Recycling Fee							\$ 28,000	
12	Annualized Auditing Fee (c)							\$ 25,116	
13	Amortized City Contracting Fee (d)							\$ 17,143	
14	Other								
15	TOTAL REVENUE REQUIREMENT							\$ -	
16	Tons Collected								
17	Operations Cost Per Ton Collected	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
18	Revenue Requirement per Ton Collected	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	

(a) Includes Driver/Helper/Supervisor Wages and Benefits, Vehicle Depreciation and Maintenance, Vehicle Insurance, Fuel, Uniforms and Other Route Costs.

(b) Please enter recyclable material sales revenue as a negative number (to offset the operations costs).

(c) \$80,000 the second year, for an audit of the first fiscal year, and \$50,000 every other year thereafter.

(d) \$120,000 over the seven-year term.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

PROJECTED ROUTES AND ROUTE HOURS

Proposing Company: _____

Instructions: Fill in boxes outlined in bold.

Row	Truck Type	# of Truck Routes							Total Route Days / Week	Hours Per Route per Day (1)	Total Route Hours / Week (2)
		Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday			
1	Automated Refuse								-		-
2	Automated Recycling								-		-
3	Automated Green Waste								-		-
4	Bin Refuse								-		-
5	Bin Recycling								-		-
6	Bulky Item Pick-Up Routes								-		-
7	Scout Vehicle (3)								-		-
8	Burro Vehicle/Strand								-		-
9	Roll-Off Box Routes								-		-
10	Other _____								-		-
11	Other _____								-		-
12	Total Routes	-	-	-	-	-	-	-	-		-

(1) For example, 8, 9 or 10 hour days.

(2) Total Route Days / Week multiplied by Hours Per Route Per Day

(3) If applicable; not currently used. Contactor may not charge an additional fee for scout or pushout service.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

COST COMPONENTS AND COST WEIGHTINGS

Proposing Company: _____

Instructions: Fill in boxes outlined in bold. Percentages should automatically calculate.

Row	Cost Components	All Services Except Roll-Off		Roll-Off		Total	
		Annual Dollar Amount	Percentage of Total Costs	Annual Dollar Amount	Percentage of Total Costs		
1	Labor		0%		0%		
2	Fuel		0%		0%		
3	Equipment		0%		0%		
4	Transformation		0%	N/A (1)	N/A		
5	Disposal		0%	N/A (1)	N/A		
6	All Other		0%		0%		
7	Total	\$ -	0%	\$ -	0%	\$ -	
8	Roll-Off Box Disposal Costs from Attachment 3-F, Row 6:						\$ -
9	Total Cost Based Upon This Attachment 4-D:						\$ -
10	Total Projected Revenue Requirement Based Upon Attachment 4-A, Row 17, last column (should agree to Row 9):						\$ -
11	Difference (explain any significant difference in proposal):						\$ -

(1) Roll-off disposal/transformation is compensated on a per ton basis.

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

TONNAGE DIVERSION PLAN

Proposing Company: _____

Instructions: Fill in boxes outlined in bold. Confirm automatic calculations. Proposers must demonstrate how they will reach the contractually required diversion of hauler collected waste. Haulers are encouraged to divert additional waste. If a hauler will contractually commit to reaching a higher diversion rate, this should be clearly stated in the proposal as an enhancement and must be supported below.

Proposed Guaranteed Diversion Rate: (this rate should be no higher than the rate proposed on Row 8 below, and must be at least 44%)

Row	Waste Stream	Tons Collected	Tons Diverted					Tons Diverted as % of Tons Collected
			Commingled Recycling	Greenwaste	C&D Processing	Transformation	Other (1)	
1	Residential Refuse (cart)	-						-
2	Residential Recyclables	-						-
3	Residential Greenwaste	-						-
4	Commercial Refuse (Bin)	-						-
5	Commercial Recyclables	-						-
6	Rolloff Service	-						-
7	Holiday Trees/Bulky Items/Abandoned Items/Special Events/Other	-						-
8	Total for Franchise Agreement	-	-	-	-	-	-	-

Failure to complete and submit this form will deem the proposer's franchise proposal non-responsive.

Attachment 5

Anti-Collusion Affidavit

Proposer as a part of this proposal submits the following affidavit:

The undersigned deponent, of lawful age, being duly sworn, upon his oath deposes and says: That he has lawful authority to execute the within and foregoing proposal; that he has executed the same by subscribing his name hereto under oath for and on behalf of said proposer; that proposer has not directly or indirectly entered into any agreement, express or implied, with any proposer or proposers, having for its object the controlling of the price or amount of such proposal or proposals, the limiting of the proposals or proposers, the parceling or farming out to any proposer or proposers or other persons of any part of the contract or any part of the subject matter of the proposal or proposals or of the profits thereof, and that he has not and will not divulge the sealed Proposal to any person whomsoever, except those having a partnership or other financial interest with him in said proposal or proposals, until after the said sealed proposal or proposals are opened.

Deponent further states that the proposer has not been a party to any collusion among proposers in restraint of freedom of competition; by agreement to make a proposal at a fixed price or to refrain from submitting a proposal; or with any City official or employee as to quantity, quality, or price in the prospective contract; or in any discussions between proposers and any City official concerning exchange of money or other things of value for special consideration in the letting of a contract; that the proposer has not paid, given or donated or agreed to pay, give or donate to any official, officer or employee of the City directly or indirectly, in the procuring of the award of contract pursuant to this proposal.

Executed under penalty of perjury on this _____ day of _____, _____ at _____.

SIGNED _____

BY _____

TITLE _____

COMPANY _____

Failure to complete and submit this form will deem the proposer's proposal incomplete and nonconforming.
--

Attachment 6

Draft Franchise Agreement for Integrated Solid Waste Management Services

DRAFT

FRANCHISE

AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

* * *

September 1, 2010

DRAFT

FRANCHISE
AGREEMENT
BETWEEN
CITY OF MANHATTAN BEACH
AND

FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

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ARTICLE 2 14

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RECITALS

This Franchise Agreement (Agreement) is entered into this __ day of _____, 2010, by and between the City of Manhattan Beach (City) and _____ (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the City seeks to contract with a solid waste hauler to work together to implement sustainable programs and practices to reduce landfill tonnage, increase producer responsibility, reuse, repair and recycling, and educate the community to sustain the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, in response to a Request for Proposals, Company has submitted a proposal to City and City selected Company on the competitive advantages of that proposal over other proposals received by City; and,

WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 5.24 of the Manhattan Beach City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.2 Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Green Waste, to be Collected by Company pursuant to Section 3.6.3.

1.3 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. 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.

1.4 Agreement

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.5 Section Deleted

1.6 Section Deleted

1.7 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

1.8 Bin

"Bin" means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

1.9 Bulky Waste

"Bulky Waste" means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); Electronic Waste (including stereos,

televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.10 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

1.11 Can

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

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 30 and no greater than 101-gallons.

1.13 City

"City" means the City of Manhattan Beach, a 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.

1.14 Collect/Collection

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

1.15 Commercial and Industrial

"Commercial and Industrial" refers to property, or Owners of property, upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.16 Company

"Company" means _____, a _____ corporation and its officers, directors, employees, agents, companies and subcontractors.

1.17 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.18 Complaint

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.19 Composting

"Composting" means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

1.20 Construction and Demolition Waste

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

1.21 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

1.22 CPI

"CPI" means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index - U.S. city average.

1.23 Customer

"Customer" means the Person having the care and control of any Premises in the City receiving Solid Waste Collection service from the Company.

1.24 Disposal

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

1.25 Disposal Site(s)

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

1.26 Electronic Waste or E-Waste

"Electronic Waste" or "E-Waste" means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

1.27 Environmental Laws

"Environmental Laws" means all federal and State statutes, county, local and the 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 Toxic Substances Control 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.

1.28 Facility

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

1.29 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

1.30 Food Waste

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste pilot programs included in Sections 3.2.7 and 3.2.8, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,
- Tea bags, coffee grounds and filters.

1.31 Green Waste

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

1.32 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.33 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.34 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

1.35 Materials Recovery Facility

“Materials Recovery Facility” means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

1.36 Mixed Waste Processing

“Mixed Waste Processing” means the separation and sorting of recyclables and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

1.37 Multi-Family

"Multi-Family" means pertaining to any Residential Property with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

1.38 Non-City Sponsored Events

“Non-City Sponsored Events” means periodic events (one-time, annual or occasional, but not year-round) not covered by Section 3.6.5.

1.39 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.40 Permanent Rolloff Box Service

“Permanent Rolloff Box Service” means the Collection of Solid Waste generated from ongoing operations at a Customer’s place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premise that would otherwise be Collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.41 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, town, city, or special purpose district.

1.42 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.43 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.44 Rate Year

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.45 Recycling

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.46 Recyclable Materials

"Recyclable Materials" means Residential, Commercial or Industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.47 Refuse

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.48 Residential

"Residential" refers to property, or Owners of property, which is used for Residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.49 Rolloff Box

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

1.50 Sand Section

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

1.51 Single-Family

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

1.52 Solid Waste

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.54 State

"State" means the State of California.

1.54 Temporary Service

"Temporary Service" means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a

Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business' ongoing operations is not included.

1.55 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

1.56 Universal Waste

"Universal Waste" means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

1.57 Zero Waste

"Zero Waste" means a focus on reducing landfill tonnage by reducing consumption, minimizing waste, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired or Recycled back into nature or the marketplace.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

2.3 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

2.4 Effective Date

The effective date of this Agreement shall be _____ ("effective date").

2.5 Term of Agreement

The term of this Agreement shall commence on August 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) Effectiveness of the City Council Action. The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Proposition 218

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of

Article XIII D of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIII D with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIII D, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIII C, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

2.9 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;
- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;

- d) Roll-Off Box and Bin service provided at Non-City Sponsored Events;
- e) Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- f) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- g) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold.
- m) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- n) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the Company under this Agreement. City

may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Green Waste from City landscaping maintenance operations, contract services, “niche” Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

The City may direct the Company 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 that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the 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 of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- 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.

2.10.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted

the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

2.12 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.13 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (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 the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event,

this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.15 Business License

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

The work to be done by the Company 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 the Company 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 the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

3.1.1 Residential Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with new Refuse Carts of 96- 64- or 32-gallons, as requested by Customer as described in Section 3.7.1.1. Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

Customers may request "Backyard Service" for an additional charge in accordance with the approved rate schedule. Backyard Service means that Company removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer's designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Contractor shall instruct Customers to call in for overage pickups. Contractor shall Collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge whether or not pickup was called in. If pickup was not called in, a notice shall be left for the Customer indicating a Cart overage Collection was made.

Contractor shall provide a three-month grace period at the start of service in which it will leave notices on Carts when overages are Collected, informing Customers as to this new policy, including how to call for an additional or larger Refuse Cart. Recording of overage pickups and overage charges will begin August 1, 2010.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Contractor shall Collect all additional Refuse placed out for Collection in the Residential Customer's own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

Company shall provide Bin service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family, Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located.

Customers that require twice per day Collection shall be charged as though they had twice the number of Containers being Collected once per day.

Customers may lease from Company or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

3.1.3.2 Temporary Bin Services

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3.3 Commercial Cart or Can Service

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

3.1.3.4 Locking Bins

Contractor may charge for locking bin service in accordance with the approved rate schedule. No additional fees shall be permitted for provision or installation of the lock.

3.1.3.5 Scout Service/Push-Out Service

Contractor may not charge an additional fee for scout service, whereby a second vehicle is used to position the Container for Collection, or push-out service, whereby the driver must move the Container a significant distance for Collection.

3.1.4 Rolloff Box Service

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 3. Customers may lease from Company or third parties compactor Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff Boxes remains within the scope of this Agreement, unless otherwise excluded per Section 2.9.

3.1.5 On-Call Bulky Waste Pickup

Company shall provide Bulky Waste pickup service to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day.

Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)
- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

3.1.5.1 Single and Multi-Family Customers

Single and Multi-Family Customers, whether Bin, or Cart Customers, are entitled to three Bulky Waste pickups per dwelling unit per year at no additional charge, with additional pickups Billed in accordance with the approved rate schedule in Exhibit 3. Customers may place up to three (3) items out for Collection per pick-up.

3.1.5.2 Commercial Customers

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 3, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

3.1.6 Commercial Container Overflow Procedures

3.1.6.1 Service Level Upgrade

Customers that regularly produce more Solid Waste 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 Container, Company 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 the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container 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 will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period – Upon the third event of an overfilled Container 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 documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized

Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

3.1.6.2 Container Overage Fee

If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide new 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Section 3.7.1.1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

3.2.2 Commercial Recycling

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

Commercial Recycling Site Visits - Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers' Premises not currently subscribing to recycling service and meet with the Customer for the purpose of establishing a Recycling Program. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling

program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type.

At the end of the first six (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse service levels including number and size of Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

Company will visit all new Customers added after the start of this Agreement within two weeks of the start of new service. Company will continue to conduct on-site visits to Multi-Family Bin and Commercial Customers throughout the term of the Agreement to implement new and optimize existing Recycling programs for each Customer. A list of new account and ongoing account visits, including all the information required above, shall be provided to the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers – Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container.

3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City's Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
August 1 st , 2011	\$28,000	July 1 st , 2015	\$32,000

July 1 st , 2012	\$29,000	July 1 st , 2016	\$33,000
July 1 st , 2013	\$30,000	July 1 st , 2017	\$34,000
July 1 st , 2014	\$31,000	July 1 st , 2018*	\$35,000

* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

3.2.4 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent Construction and Demolition Waste that is suitable for Recycling from being taken to the landfill by:

- Following the City’s Construction and Demolition Debris Diversion requirements of the Municipal Code;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,
- Contacting contractors on a list provided by the City annually to educate them on Construction and Demolition Waste diversion.

3.2.5 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

3.2.6 Universal Waste

Company shall instruct Customers not to set out universal waste for Collection except through programs included in this Agreement specifically tailored for the Collection of such items, including SHARPS Collection programs, Bulky Waste Collection, or the optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green waste, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

3.2.7 Residential Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Residential Cart Customers. Program shall be subject to City approval. Company shall conduct the approved Residential food waste pilot program at no additional cost to City or ratepayers, beginning July 1, 2012 (unless start date is extended by City).

Pilot program shall be conducted for a minimum of six months. Participants shall include one full Residential route for one day each week. Company shall develop, produce and deliver public education materials to all Customers on the participating route. Materials shall be subject to advance City approval.

Company shall collect baseline tonnage data from this route for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company

shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.2.8 Commercial Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Commercial Food Waste generating Customers. Program shall be subject to City approval. Company shall implement a Commercial Food Waste pilot program for a minimum of six months beginning July 1, 2012 (unless start date is extended by City) for 10% of Food Waste generating Commercial Customers in the City at no additional cost to either City, participants or rate payers.

Prior to the start of the pilot program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Refuse capacity prior to the start of the pilot. . Company collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of food waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Commercial food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.3 Green Waste Program

3.3.1 Residential Green Waste Collection

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one new 96-, 64- or 32-gallon Green Waste Cart in accordance with Section 3.7.1.1. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit

in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

3.3.2 Rolloff Box Service

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.3 Holiday Tree Collection Program

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than seven (7) feet, be free of ornaments, garlands, and tinsel, and stands must be removed. Trees shall be diverted from Disposal.

3.3.4 End Uses for Green Waste

Company shall divert Green Waste materials from Disposal. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by CalRecycle.

3.3.5 Compost Bin Distribution

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill Customer a co-pay amount to be determined by City. The difference between the amount billed to the Customer and the actual cost of the bin to the Company (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 of compost bins to be distributed.

Company shall develop a public education flyer for this program and provide it to City for distribution. Company, including a Company-provided instructor, shall conduct three annual, one-hour composting classes, in May, July and October of each year.

3.4 Warning Notice

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

3.5 Commercial Mixed Waste Processing

Company shall send sufficient tons of Bin Refuse for processing to recover a minimum of 1,365 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

3.6 City Services

3.6.1 City Facilities Collection

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, parks, street maintenance operations, and Street Litter Containers (see Section 3.6.4 below). Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required.

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly dispose of hazardous waste that is generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 10. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

3.6.4 Street and Park Litter Containers

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, all Solid Waste deposited in City's Street and Park Litter Containers as necessary to prevent overflow at no additional cost at all existing locations. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

3.6.5 City Sponsored Events

The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. This shall include providing Containers to Collect and Dispose of all Solid Waste, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source-separated Recyclables. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

3.6.6 Emergency Collection and Disposal Service

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/ tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

3.6.7 Sharps Collection Program

Company shall provide Sharps containers to requesting Residential Customers, both Single and Multi-Family Cart and Bin Customers. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in Exhibit 9, Company may alternatively arrange for door-to-door Collection of such containers through this program. "Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program. This program will be provided at no additional charge to City or Customers and shall be operational within 30 days of the execution of this Agreement.

3.7 Containers

3.7.1 Carts

3.7.1.1 Residential Cart Distribution

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, Customers may request one Cart exchange at no charge each year. After one exchange per year, Customers may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than May 18, 2011 to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

3.7.1.2 Removal of Existing Containers

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts and Cans and Customer-provided Cans, if Customer does not intend to retain the Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected. Company is responsible for all costs associated with Container collection and Disposal or Recycling. Company may retain any scrap value received from the Recycling of collected Containers.

3.7.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

Carts shall include a minimum of _____% recycled material and be recyclable.

3.7.1.4 Capacity

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

3.7.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

3.7.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;

- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

3.7.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color, matching current colors in distribution. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

3.7.1.8 Cart Labeling

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. The City's logo and, if requested by City, the City website shall appear on the Carts. Company's name and phone number shall be included on a label on the Cart lid (Company's name or logo shall not be visible on the side of the Cart).

3.7.1.9 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Carts. Company shall not hot stamp Company name on Carts.

TRASH, RECYCLING or **GREENWASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English, with graphics and instructions for proper disposal of HHW, and shall place labels on top of all Carts delivered to Customers.

3.7.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

3.7.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70

3.7.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;

- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

3.7.2.4 Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

3.7.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

3.7.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

3.7.3 Can Design and Performance Requirements

The Cans shall be manufactured by injection or rotational molding and meet the Can design and performance requirements as specified below. All Cans selected shall be subject to City approval.

3.7.3.1 Capacity

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

3.7.3.2 Can Handles

The Can handles will provide comfortable gripping area for carrying the Can.

3.7.3.3 Can Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

3.7.3.4 Can Colors

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

3.7.3.5 Identification Markings

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

3.7.3.6 Can Load Capacity

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

3.7.3.7 Can Durability

Cans shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.3.8 Chemical Resistant

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

3.7.3.9 Reparability or Replacement

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

3.7.4 Cart and Can Ownership and Maintenance Responsibilities

All Carts and Cans in distribution at the start of service under this Agreement, other than those provided by Customers, and all Carts and Cans that are distributed by

Company under this Agreement, shall become and remain the property of the City. The Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

3.7.5 Bins and Compactors

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Company shall remove graffiti at no additional charge from any Container within twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

3.7.6 Rolloff Boxes

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.8 Diversion Requirements

3.8.1 Hauler Diversion Requirements

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation is ____% of the waste Collected by Company under this Agreement during each year of this Agreement; diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to CalRecycle). Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants the City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

3.8.2 City-wide Diversion Rate

Should the City not reach the City-wide AB 939 50% diversion goal for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake reasonable efforts to implement programs and provide equipment necessary in order for the City to meet the 50% diversion goal.

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 P.M and 7:30 A.M. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. Company shall adjust the early morning

start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven day per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven day per week customers.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

3.9.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) years

old. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG) at the start of service under this Agreement. Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the Company in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-Off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its 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) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) The Company 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. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event

shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.

- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.
- 4) Company shall equip all route vehicles with a GPS tracking system and enable the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

F. City Inspection Per Code. The 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 applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, 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, which decision shall be final.

3.9.3 Litter Abatement

A. Minimization of Spills. The Company 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 are spilled during Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company 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 the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

3.9.4 Personnel

The Company 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company'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.

The Company 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. The Company 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company 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.

3.9.5 Identification Required

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

3.9.6 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any

compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

3.9.8 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

3.10 Transportation, Disposal and Processing

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains

ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Site shall be the _____. The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. In the event that City selects a Disposal Site or other Facility, the City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a change in tip fee or transportation costs.

3.11 Status of Disposal Site

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

3.12 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 Manhattan Beach Solid Waste. Company may request permission from the City for an exception on a case-by-case basis.

3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual route audit, at minimum, shall

consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in the City. The annual route audit information shall include, at 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);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Whether each individual address is Commercial or Multi-Family;
- Number of Residential Dwelling units at each Multi-Family account;
- Service Level per Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted to the Public Works Director and one to the City's billing manager. This summary shall include:

- Identification of the routes;
- Truck numbers;

- Number of accounts, by route and in total (Residential Cart, Multi-Family Bin, and Commercial);
- Types of billing and service exceptions observed;
- Number of billing and service exceptions by type;
- Total monthly billing, pre-audit;
- Total monthly billing, post-audit (subsequent to corrections of identified exceptions; and,
- Percentage of billing and service exceptions:
 - Percentage of the number of accounts with errors to the total number of accounts served;
 - Percentage of the “net” change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
 - Percentage of the “absolute” change in net monthly billing as a result of the audit to the total “pre-audit” monthly billing.

The report shall include a description of the procedures followed to complete the annual 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. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company’s plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

3.14 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made, through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company 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. The Company 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 the City. In addition to other required notifications, if the Company observes any substances that 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, the Company will immediately notify the Public Works Director or the Public Works Director's designee.

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

3.15 Hazardous Waste Management Component

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

ARTICLE 4
OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services in subsections A and B below.

A. Compost Bin Co-Pay. The Residential Customers' co-pay for compost bins shall be billed by the Company.

B. Rolloff Box and Temporary Bin Services. In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

4.1.2 City Billing

City shall perform all billing under this contract, other than Rolloff Box service, temporary Bin service, and compost bin co-pays. City reserves the right to direct Company at any time during the Agreement Term to charge Customers for periodic charges such as Bulky Waste pickups, Cart overage pickups, and Bin Container Overage Fees.

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of the City billing Customers. Payment will be based on City's records of services rendered and will be

subject to subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see 4.1.4 below).

4.1.4 Company Responsible for Service Level Accuracy

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt. Failure to notify the City in writing within 45 days shall confirm the Company's approval and acceptance of the payment amount.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

4.1.5 Review of Billings

The Company shall review Billings to customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.6 Suspension of Service Due to Non-Payment

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time

periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.7 Franchise Fee

A. Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes Billing of permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

B. Time and Method of Payment

Company shall remit the Franchise Fee payments on or before the thirtieth (30th) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30th) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs), and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

4.2 Customer Service

4.2.1 Office Hours

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A

responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and number of representatives shall be adequate to handle the volume of calls typically experienced on the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

4.2.3 Complaint Documentation

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four (24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially

responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

4.2.4 Resolution of Customer Complaints

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

4.2.5 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints and assist with waste reduction programs. City shall have the right to approve the Company's choice for a liaison.

Government Liaison shall be the community relations liaison for Manhattan Beach business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his\her physical presence when requested or appropriate at schools, businesses and business organizations, community events, Environmental Task Force meetings, City Council meetings and workshops, et al.

4.2.6 Service Liaison

Company shall designate in writing a field supervisor (i.e. route manager) as "Service Liaison" who shall be responsible for working with City and/or City's designated

representative(s) to resolve Customer service related complaints, and strategize with City on an on-going basis regarding more efficient Collection practices. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

4.2.7 Customer Service Liaison

Company shall designate a customer service representative to which the City can direct customers that contact the City with Solid Waste service questions. Customer Service Liaison will take responsibility for completing and closing out work orders within the City's designated work order system.

4.2.8 School Outreach Liaison

Company shall designate a School Outreach Liaison to oversee and coordinate all waste reduction activities under Section 4.3.8 below.

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Zero Waste Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods acceptable to the City. Any outreach material utilizing paper, provided and distributed by the Company, shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall assist the City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to the City. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

- **Initial Cart Selection Mailing** – Company shall prepare and distribute the mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** – At least 30 days prior to August 1, 2011, Company will prepare and mail, using City-provided labels, an initial mailing to Residential and Commercial Customers explaining the transition from the existing programs to the new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information. For Residential Cart Customers, this mailing will be in addition to the initial mailing requesting Cart Customers to select Cart sizes and numbers.
- **Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an “e-book” or “e-magazine” format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.
- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.

- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract is in effect, using City-provided mailing labels.
- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City’s request and with City’s review and approval of the materials. Notices will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners’ associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the Company shall be made from recycled-content paper and must be labeled “Printed on Recycled Paper” on the outreach material.

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Zero Waste Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Zero Waste programs.

4.3.5 Use of "Manhattan Beach Recycles" Program Name

The program name "Manhattan Beach Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. Company may use "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

Company shall provide in-unit Recycling Containers to each Multi-Family Customer Dwelling Unit upon request of individual Dwelling Unit, property owner or manager. In-unit Containers shall be hot stamped or labeled with items that may be placed in the Recycling Container, and shall not carry Company logo and shall become the property

of the City upon distribution. City logo may be used. Company will provide all property managers and Residents with Bin service with Recycling program guidelines, posters to be placed in laundry rooms, refuse/recyclable container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin Customer service. Company shall contact each Multi-Family Customer building owner or property manager by September 30, 2011 in an effort to implement recycling programs **with an emphasis on Zero Waste**, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the recyclables containers.

Company shall prepare and mail a brochure with recycled content and labeled “Made from Recycled Paper” at least once per year to each Multi-Family Dwelling unit that does not individually receive semi-annual and quarterly notices under Section 4.3.2; brochure shall describe all Solid Waste programs and holiday schedules as they apply to Multi-Family Cart Customers and to Residential Bin Customers.

Company commits a minimum of ____ hours of Company staff, or third-party contractor, time per year towards meeting Multi-Family outreach efforts as described in this section.

4.3.7 Commercial Outreach Recognition Program

Company commits a minimum of ____ hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

Green Business Certification Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses **making efforts to become a Zero Waste Business in the community**. Company will develop a comprehensive program to promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;

- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with an award to be mutually agreed upon by City and Company.

Zero Waste Green Works – Promoting Recycling at the Work Place

Company will provide businesses with recycled-content prizes such as reusable water bottles, reusable grocery bags, and/or other incentives for managers to provide to employees who contribute to the business' Zero Waste green program.

Company will provide business managers with promotional information, flyers and instructional posters made from recycled paper and labeled "Made from Recycled Paper" to implement a comprehensive waste reduction and recycling program, including information on what cannot be placed in the recycling container (i.e.: HHW).

Company shall provide initial and on-going consultation and support to businesses who request it to ensure long term success of their business' waste reduction and recycling program.

4.3.8 School Zero Waste Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District and private schools, to promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative recycling containers to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;
- Conduct a minimum of one assembly promoting recycling at each school in the City each year;
- Education and training on proper recycling and waste reduction techniques to students and teachers and web-based resources for the district and schools' websites;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program;
- Proper signage for all school sites;
- Provide teachers with sample lesson plans and activity sheets made from recycled paper and labeled "Made from Recycled Paper" on relevant topics on an as requested basis; and,
- Contact each school at least once per semester to offer all services included in this section. City or school may request that more frequent contacts be made. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at schools, Company shall make

an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management, janitorial staff, faculty and student volunteers to ensure that improved recycling and waste reduction techniques have been implemented.

Company commits a minimum of ____ hours of Company staff, or third-party contractor, time per year towards meeting School outreach efforts as described in this section. Time allocated to contacting schools to offer programs shall not be counted towards minimum.

4.3.9 Recycling Facility Tours

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

4.3.10 Take-Back Programs

[TO BE COMPLETED BASED UPON PROPOSAL]

4.4 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 (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. 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 5

COMPANY COMPENSATION AND RATES

5.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

5.2 Initial Rates

The Company Compensation from August 1, 2011 through June 30, 2012 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2012, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline. If any rates would decline based upon Section 5.4 calculations and a rate decrease is not implemented, the subsequent rate adjustment shall be based upon the average changes in indices since previous rate adjustment instead of the average change over the prior year.

The rate adjustments shall apply to the Contractor Compensation rates included in Exhibit 3. The Contractor Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

5.4 Method of Adjustments

5.4.1 General

For Rate Years beginning July 1, 2012, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

5.4.2 Cost Components for Rate Adjustment Indices

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor (1)</u>
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor			Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel			Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	TO BE PROPOSED		Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal			Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average [OR AS PROPOSED]
Transformation (if applicable)			Actual change in the per ton gate rate at the waste-to-energy facility approved for use
All Other			Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100.0%	100.0%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

5.4.3 Rate Adjustment Steps

Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the

December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 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.

Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (the average annual change in the CPI). See Exhibit 4B. **[OR AS PROPOSED]**

5.5 Extraordinary Adjustments

The Company may not request an adjustment in Company Compensation other than the adjustments permitted under Section 5.3. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of the rate based on an increase or decrease in a direct per ton surcharge assessed at the disposal site by Federal, State or local regulatory agencies after the effective date of this Agreement, to the extent the percentage change in these adjustments exceed the cumulative percentage change in the Disposal component adjustments granted under Section 5.3.

For each request for an adjustment to the maximum rates that Company may charge Customers brought pursuant to this section, Company 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 Company in preparing the estimate. Company 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 Company's annual financial statements in connection with the City's review of Company's rate adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

City shall review Company's request and, in City's sole judgment and absolute 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 Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to meet the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.
- c) Results of the most recent route audit as described in Section 3.13.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results, feasibility of providing new services, application of new technologies, Customer

complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

6.2 Performance Satisfaction Survey

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1. City shall notify Contractor of its desire for such a survey at least 90 days in advance of the Solid Waste Services and Performance Review Meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Contractor to send out separate Single Family and Multiple-Family/Commercial surveys. Contractor shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may choose to write or re-write the survey. City may require that Contractor have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

The Company 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, the Company agrees to conduct data Collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. 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 the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

7.2.3 Solid Waste Service Records

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for limited services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick ups;
- f) Number of Refuse, Recycling, and Green Waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

7.2.4 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

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 Biennial Audit

Company shall fund biennial audits as described below. 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. The first audit will be based on the Contractor's reports and records for Fiscal Year 2012 and may be conducted as soon as relevant data, such as tonnage, is available. Audits will be performed every other year thereafter (the biennial audit). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, 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 by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

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 efficiency of operations;
- b) Evaluate past and expected progress towards achieving AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under

penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

Public Works Director (or designated representative)
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.

- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.
- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.

7.3.3 Quarterly Reports

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling programs with Company, and their service levels.

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated

- companies, and of other entities that may perform services under this Agreement, as the City may request.
- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
 - f) Number of routes and route hours per day by type of service.

7.3.5 Financial Report

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing the Company'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 supplemental combining schedule may be audited, reviewed, or compiled, as determined by City. 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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

7.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

7.5 Right to Inspect Records

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, 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) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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 or active negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement. Company’s indemnification of the City is subject to all of the following restrictions:

- a. The Company’s obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et. seq.* of the Public Resources Code.
- b. No payment required under the company’s obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company’s breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company’s breach or non-compliance resulted from City’s action

or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

8.4 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a) The City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
 - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
 - d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. The Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

8.5 Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to

cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the 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, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.7 Performance Bond Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 3.8, will not be substantiated until after the final service date. Therefore, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of 36 months after the end of the Term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after 36 months, shall relieve Contractor of payments to the City that may be due, or may become due.

8.8 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

8.9 Pavement Damage

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

9.5 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company 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 Company is entered.
- E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand,

with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company 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.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company 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.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

10.2 Criminal Activity of Company

Should the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Contractor has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty and any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain. If the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. The City finds, and the Company 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 the City as a result of a breach by the Company of its 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) the services provided under 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 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 Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the 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.

Company _____ City _____
Initial Here _____ Initial Here _____

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

1. **Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually:
\$150.00
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five (5) such failures annually: \$ 50.00
- c) For each failure to correct a missed pickup within the timing allotted for correction per Section 4.2.2, and for each additional business day in which the Collection is not made up, which exceeds ten (10) such failures annually:
\$50.00/day
- d) 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:
\$150.00

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids closed which exceeds ten (10) such occurrences annually:
\$150.00

- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) such occurrences annually:

\$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually:

\$150.00
- f) For each failure to deliver a Rolloff Box or temporary Bin within 48 hours of a Customer's request:

\$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed:

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:

\$250.00
- c) For each failure to notify City within one (1) hour from the time Company has remedied a complaint forwarded by City.

\$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers:

\$150.00
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company.

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversion Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the ___% diversion requirement per Section 3.8.1: \$25 per ton

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 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 11.8: \$1,000/day

The 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.

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

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Contractor shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify Public Works Director sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Contractor shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 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. Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a “reverse 911” contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company 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, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

10.6 Assurance of Performance

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

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

11.2 Compliance with Law

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

11.3 Governing Law

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

11.4 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.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) Contractor shall pay City its reasonable expenses for attorney's and/or consultant'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.
- b) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided;

- 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) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the 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 sale of operations conducted by the Company 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 the City with a complete list of 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties 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 Working 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.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that customers neither need to find storage for two sets of containers nor go without a container for an inconvenient length of time.

11.9 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.

11.10 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 that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 The Company's Investigation

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

11.12 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

11.13 Notice

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

If to the City: City Manager
 City of Manhattan Beach
 1400 Highland Avenue

Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

And to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to the Company: _____

Copy to: _____

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

11.14 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

11.15 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of 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 under Section 10 of this Agreement.

11.16 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement.

11.17 Privacy

The Company 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 the Company 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 so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.18 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

11.19 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

11.20 Guarantee of Contractor's Performance

Pursuant to a guarantee in substantially the form attached as Exhibit 5, _____, a _____ corporation which owns all of the issued and outstanding common stock of _____, has agreed to guarantee the Company's performance of this Agreement. The Guarantee is being provided concurrently with the Company's execution of this Agreement.

11.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

12.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

12.4 Interpretation

This Agreement, including the exhibits 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.

12.5 Agreement

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

12.6 Severability

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

12.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH

("City")

ATTEST: _____
CITY CLERK

By: _____
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

COMPANY NAME

City Attorney

By: _____
Name:
Title:

EXHIBIT 1
COMPANY PROPOSAL

EXHIBIT 2
PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 3
MAXIMUM INITIAL COMPANY COMPENSATION

Residential Monthly Rates (as of August 1, 2011)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate		
	Standard Service	Extra Refuse Cart	Backyard Service Surcharge (2)
96-gallon refuse ⁽¹⁾		\$ 8.00	
64-gallon refuse ⁽¹⁾		\$ 6.00	
35-gallon refuse ⁽¹⁾		\$ 4.00	

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building	
	Standard Service	Backyard Service Surcharge (2)
2 Dwelling Units		
3 Dwelling Units		
4 Dwelling Units		
5 Dwelling Units		
6 Dwelling Units		
7 Dwelling Units		
8 Dwelling Units		
9 Dwelling Units		

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

Note: Additional refuse carts for customers with 2 to 9 units, and additional recycling and green waste carts for all residential cart customers shall be provided at no additional charge.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(as of August 1, 2011)

Commercial Bin Rates

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can								\$ 3.50
32-Gallon Cart								\$ 3.50
64-Gallon Cart								\$ 7.00
96-Gallon Cart								\$ 10.00
2 Cubic Yard								\$ 19.35
3 Cubic Yard								\$ 29.00
4 Cubic Yard								\$ 38.69
6 Cubic Yard								\$ 58.01
2 Cubic Yard Compactor								\$ 33.04
3 Cubic Yard Compactor								\$ 49.15
4 Cubic Yard Compactor								\$ 66.64
6 Cubic Yard Compactor								\$ 100.27

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(as of August 1, 2011)

Rolloff Box Rates

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	per pull
Compactor Box, Any Size	per pull
Rolloff Per Ton Charges	
Refuse Disposal	per ton
Mixed Recyclables	per ton
Green Waste	per ton
Additional Container Rental - (for boxes emptied less than 3x/month)	
Standard Box, Any Size	per week
Compactor Box, Any Size	per week

Optional C&D Rates

Rate Per Pull, Excluding Disposal	
25-40 cubic yard roll-off box	per pull
Low Boy (10 cubic yard) roll-off box	per pull
Rolloff Per Ton Charges	
Mixed Loads of C&D Debris	per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
Temporary Bin Service	
First Dump, including delivery and disposal	per dump
Additional dumps, including disposal	per dump

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(as of August 1, 2011)

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included				
Each Additional Dump				
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)

EXHIBIT 4A

EXAMPLE CART & 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)	107.30	109.15	1.7%		
2	Fuel	(2)	344.0	159.1	-53.8%		
3	Equipment	(3)	118.9	124.3	4.5%		
4	Disposal	(5)	215.8	219.2	1.6%		
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%		
6	All Other	(4)	215.8	219.2	1.6%		
Step Two: Determine components							
Row	Adjustment Factor	Index	D	E	F		
			Cost Factor Category Weighted as a % of Component Total (7)	Percent Change In Index (from Column C)	Total Weighted Change (Columns D x E)		
7	Labor	(1)	31.1%	1.7%	0.5%		
8	Fuel	(2)	4.5%	-53.8%	-2.4%		
9	Equipment	(3)	12.9%	4.5%	0.6%		
10	Disposal	(5)	33.4%	1.6%	0.5%		
11	Transformation	(6)	2.3%	14.6%	0.3%		
12	All Other	(4)	13.5%	1.6%	0.2%		
13	Total		97.7%		-0.3%		
Step Three: Apply percentage change to rates							
Row	Rate Category		G	H	I	J	
			Current Customer Rate (8)	Total Weighted Percent Change (from Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)	
14	64-gallon Cart Service	\$	12.85	-0.3%	\$ (0.04)	\$ 12.81	
15	2 unit Service	\$	24.04	-0.3%	\$ (0.07)	\$ 23.97	
16	1 unit backyard	\$	7.34	-0.3%	\$ (0.02)	\$ 7.32	
17	2 unit backyard	\$	13.99	-0.3%	\$ (0.04)	\$ 13.95	
18	Extra bulky item	\$	21.60	-0.3%	\$ (0.06)	\$ 21.54	
19	Special Pickup/Cart Ov.	\$	5.00	-0.3%	\$ (0.02)	\$ 4.98	
20	Commercial Can	\$	13.80	-0.3%	\$ (0.04)	\$ 13.76	
21	3 yd bin, 1x week	\$	89.95	-0.3%	\$ (0.27)	\$ 89.68	
22	3 yd comp., 1x week	\$	152.46	-0.3%	\$ (0.46)	\$ 152.00	
23	3 yd bin, extra pickup	\$	29.00	-0.3%	\$ (0.09)	\$ 28.91	
Step Four: Re-weight 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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	31.1%	1.7%	0.5%	31.6%	32.4%
25	Fuel	(2)	4.5%	-53.8%	-2.4%	2.1%	2.2%
27	Equipment	(3)	12.9%	4.5%	0.6%	13.5%	13.9%
28	Disposal	(5)	33.4%	1.6%	0.5%	33.9%	34.8%
29	Transformation	(6)	2.3%	14.6%	0.3%	2.6%	2.7%
30	All Other	(4)	13.5%	1.6%	0.2%	13.7%	14.2%
31	Total		97.7%			97.4%	100.2%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.
(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*
(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.*
(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*
(5) TBD.
(6) Gate rate at transformation facility (if applicable)
(7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.
(8) Example rates listed. Adjustment applies to all applicable rate categories.

* See Exhibit 4C.

EXHIBIT 4B

EXAMPLE ROLL-OFF BOX 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	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/Ton	(5)	215.8	219.2	1.6%

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 (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	48.4%	1.7%	0.8%
9	Fuel	(2)	6.9%	-53.8%	-3.7%
10	Equipment	(3)	20.0%	4.5%	0.9%
11	All Other	(4)	21.1%	1.6%	0.3%
12	Service Component Total		96.4%	n/a	-1.7%
13	Refuse/Ton	(5)	100.0%	1.6%	1.6%

Step Three: Apply percentage change to rates

Row	Rate Category	Current Customer Rate	G	H	I	J
			Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column H x Column I)	Adjusted Rate (Column H + Column J)	
14	Standard Roll off Box Pull Rate	\$ 166.87	-1.7%	\$ (2.84)	\$ 164.03	
15	Compactor Roll off Box Pull Rate	\$ 225.28	-1.7%	\$ (3.83)	\$ 221.45	
16	Refuse/Ton	\$ 36.72	1.6%	\$ 0.59	\$ 37.31	

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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	48.4%	1.7%	0.8%	49.2%	52.0%
18	Fuel	(2)	6.9%	-53.8%	-3.7%	3.2%	3.4%
19	Equipment	(3)	20.0%	4.5%	0.9%	20.9%	22.1%
20	All Other	(4)	21.1%	1.6%	0.3%	21.4%	22.5%
21	Total		96.4%			94.7%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.*

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

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

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*

(5) TBD.

(6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

* See Exhibit 4C.

EXHIBIT 4C

EXAMPLE CALCULATION FOR AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal” and “all other” cost components in Column C.

Consumer Price Index - All Urban Consumers, U.S. City Average
All items less food and energy, CUUR0000SAOL1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235

Average Annual Change: **1.7%**

EXHIBIT 5

CORPORATE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the ____ day of ____, 2010.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. _____, hereinafter ("Owner") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by _____, (Guarantor).

B. Owner and the City of Manhattan Beach ("the City") have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, or cause to perform them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. Guarantor's Obligations Are Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following Person as its agent for service of process in California:

With a copy by certified mail to:

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City:

City Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

with a copy to the City Counsel at the same address.

To the Guarantor:

By: _____
(title)

By: _____
(title)

EXHIBIT 6

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, _____, a _____ corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2010.

a _____ Corporation

SURETY

By: _____
(PRINCIPAL)

By: _____
(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 7

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 the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company 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:

EXHIBIT 8

CITY SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

EXHIBIT 9

OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Company Compensation to compensate Company for \$_____ per year (\$_____ per month) while the program is in place. City will determine how the increase shall be billed to Customers. This \$_____ per year rate is effective as of August 1, 2011 and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2012.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);
- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and

- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist's paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with a program description, the start date, materials to be collected, and instructions on how to call in for a pickup. Company shall be required to update the City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of the City's "e-book") in public education mailers required under Section 4.3.2.

B. Additional Processing of Bin Route Refuse

City may request to have Company process sufficient Refuse that is Collected on Bin routes to recover a minimum of 3,549 tons per calendar year from this program, including the 1,365 tons required to be recovered under Section 3.5 and an additional 2,184 tons to be recovered. These annual tonnage requirements shall be pro-rated if program begins or ends partially through a calendar year. City may instruct Company to begin the additional processing upon 90 days notice, with a corresponding Company Compensation increase of _____% to be applied to monthly Bin Collection service rates and extra bin pickup rates and temporary Bin service, but excluding ancillary service rates such as Bin rental or locking Bin charges.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$____ per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and

above current program levels. This program does not include any business instruction and therefore does not need to be placed in outreach materials.

C. Exclusive Construction and Demolition Debris Collection

City reserves the right to require Company to exclusively Collect all Construction and Demolition Waste generated in the City at rates not to exceed the rates included in Exhibit 3 at any time during the Agreement Term. Company will be required to divert a minimum of 70% of all Construction and Demolition Waste Collected from landfilling under this option. Construction and Demolition Wastes does not apply towards diversion requirements under Section 3.8.1. Such maximum rates shall be adjusted in accordance with Article 6. This does not preclude City from continuing to permit open competition, to select another exclusive hauler for Construction and Demolition Waste, to competitively procure an exclusive Construction and Demolition Waste collector, or to negotiate with Company for Construction and Demolition Waste Collection.

EXHIBIT 10

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

EXHIBIT 11

COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

Agenda Item #: _____



Staff Report

City of Manhattan Beach

TO: Honorable Mayor Montgomery and Members of the City Council

THROUGH: David N. Carmany, City Manager

FROM: Jim Arndt, Public Works Director
Anna Luke, Senior Management Analyst

DATE: February 1, 2011

SUBJECT: Consideration of the Solid Waste Staff Report of the January 24, 2011 Finance Subcommittee Meeting

RECOMMENDATION:

Staff recommends that the City Council:

1. Receive and file the Finance Subcommittee staff report dated January 24, 2011;
2. Encourage broad public dissemination of this issue; and
3. Schedule matter for full City Council consideration at the February 15th meeting.

FISCAL IMPLICATION:

There is no fiscal implication to the receipt of the report.

BACKGROUND:

The Finance Subcommittee met on January 24, 2011 to discuss the “Best and Final” proposals for the city’s next solid waste contract. Attachment 1 includes the January 24, 2011 staff report and its five meeting attachments. The “Best and Final” proposals reviewed were from Athens Services, Crown Disposal, and Waste Management.

DISCUSSION:

The Finance Subcommittee directed staff to provide all three proposers’ signed contracts for City Council consideration at its February 15, 2011 meeting to select the solid waste hauler and establish solid waste rates.

Additional information requested included the following:

1. Sensitivity of disposal cost fluctuation for the term of the seven (7) year contract.
2. Percentage (%) of estimated users for 32, 64, and 96 gallon single-family residential users.
3. Breakdown of users for commercial bins and service levels.
4. Should any City Council member express interest, offer tours of proposing haulers’ facilities.

Agenda Item #: _____

Attachment:

(1) Staff Report and Attachments from the January 24, 2011 Finance Subcommittee Meeting

xc: Laith Ezzet, HF&H Consultants, LLC
Bruce Moe, City of Manhattan Beach Finance Director



Agenda Item #: _____

Staff Report

City of Manhattan Beach

TO: Finance Subcommittee

THROUGH: Dave Carmany, City Manager

FROM: Jim Arndt, Public Works Director
Anna Luke, Senior Management Analyst

DATE: January 24, 2011

SUBJECT: Consideration of Final Contracts for the City's Refuse Exclusive Franchise

RECOMMENDATION:

Staff recommends that the Finance Subcommittee review the attached (3) final draft refuse franchise agreements and provide a recommendation for award of contract for the February 15, 2011 City Council meeting.

Staff recommends Crown Disposal for the provision of city hauling services and to include Optional Services. The seven year contract has an estimated first year cost of \$3,150,000. Staff recommends including all Optional Services, as those additions best meet the City's major goals of solid waste diversion.

FISCAL IMPLICATION:

The City's current annual revenue is \$3,152,000. The recommended hauler, Crown Disposal, projects a first-year revenue of \$3,150,000. Crown's \$3,150,000 revenue includes all base services plus Optional Services, which provide a 70% hauler diversion. Therefore, the hauler diversion would increase from the current 38% to 70% with virtually no change in annual revenue.

Proposition 218 Vote Process & City Recovery Costs

If the new, proposed user rates exceed the amount of the existing user rates, a "Proposition 218 vote" is required, which allows residents the opportunity to reject the proposed rates for the next solid waste contract. Because the City Council contract award date has been moved to February 15, 2011, Council consideration of the 218 process will occur on May 3, 2011. Therefore, the earliest start date the awarded hauler may begin is June 1, 2011, and the city will need to utilize at least one (1) month of the optional Waste Management extension at \$60,000 per month.

The "City Recovery Costs" (formerly the "Administrative Fee") cover the costs of City Staff in the administration of solid waste activities. The City Recovery Costs are added separately from the hauler's rates and will be included in final user rates covered in the Proposition 218 voting process.

BACKGROUND:

The City's current solid waste contract with Waste Management will expire on April 20, 2011, with an optional six-month extension to expire on October 31, 2011. In October 2008 City Council directed the City's Solid Waste and Recycling Subcommittee of the Environmental Task Force (ETF) to provide recommendations for the city's next contract. The Environmental Task Force provided recommendations for improvements to reduce landfill waste (increase diversion) at the May 5, 2009 meeting, and at its July 7, 2009 meeting, City Council hired HF&H Consultants, LLC to assist the city with the new refuse contract process. The Council initially renegotiated with the city's current hauler, Waste Management, but ultimately declined the negotiation package and directed Staff to pursue the bid process at its April 6, 2010 meeting. On September 7, 2010, the City Council approved the Solid Waste Request for Proposal (RFP) and draft Franchise Agreement for public release. The Request for Proposal package was released on September 9, 2010.

On October 29, 2010, the city received five (5) responses: four (4) complete bid packages and one (1) no-bid letter from Toter Inc., a refuse cart company. The four (4) proposers were (in alphabetical order) Athens Services, Crown Disposal, Waste Management, and Waste Resources. Waste Resources' rates were significantly higher than the other proposers, and per Finance Subcommittee direction at the December 7, 2010 Subcommittee meeting, were eliminated from further consideration. The Finance Subcommittee also reviewed the three remaining proposals at their December 7, 2010 meeting and participated in the hauler interviews on December 13, 2010. At the conclusion of the hauler interviews, the Finance Subcommittee directed Staff to request a "Best and Final" offer and to pursue final draft contract development with all three (3) remaining proposers: Athens Services, Crown Disposal and Waste Management, with the intent to review final contract information at the January 24, 2011 Finance Subcommittee Meeting.

DISCUSSION:

As directed by the Finance Subcommittee at the conclusion of their December 13, 2010 meeting, HF&H Consultants, LLC worked with all haulers in finalizing the "Best and Final" proposals and contracts. The final contracts have been signed by its respective hauler as a commitment to administer the agreement created (see Attachments 4, 5 and 6). HF&H Consultants also created a summary of the three "Best and Final" proposals (see Attachment 2) for review and discussion at the January 24, 2011 Finance Subcommittee meeting. An overview of the attached summary will be presented at the Subcommittee meeting. *Note that the rates attached and those discussed at the Finance Subcommittee meeting are contractor rates only and do not contain the City Recovery Costs.*

Key to a recommendation of selecting a hauler is the hauler's ability to excel in diverting waste from the landfill. To reach the highest diversion of materials from the landfill as possible, the type of service requires implementing *all* the Optional Services at the lowest possible price. The Optional Services are part of the waste reduction services recommended by the Environmental Task Force and accepted by the City Council.

The Optional Service programs were either recommended by the city's Environmental Task Force and/or has been heavily requested by residents. All Optional Service programs benefit the city in its efforts to reduce its landfill tonnage therefore increasing its diversion. All Optional Services are included in the Staff recommended service level of the new contract. Tables provided in

Attachment 1 list both the residential and commercial rates with and without the Optional Services in order that cost of services may be compared.

Basis for Recommending Crown Disposal

Diversion

In evaluation of the proposals and the haulers respective strengths, Staff first considered the type of service provided that matched stated City goals. One of the most significant goals is that of diversion of waste from landfills and the reuse of disposed materials. It is Staff's recommendation that the service level selected include all Optional Services (household hazardous waste, increased mix bin processing, and food waste) to maximize diversion. With inclusion of Optional Services, the City could realize an increase in diversion from the existing 38% level to 70% as provided by the Crown Disposal proposal.

Cost

The recommended service level includes all Optional Services. Table 5 in Attachment 1 shows Athens' seven year rate revenue as \$23,400,000 and Crown at \$23,800,000 (1.7% less than Crown). Table 6 in Attachment 1 compares the hauler diversion rates. Crown's greater diversion rate of 70% compared to Athens' rate of 55% provides exceptional value in meeting one of the City's primary goals for this contract which is to reduce landfill tonnage by increasing diversion. The high diversion rate and low cost is a primary basis for the Staff recommendation.

Hauler Analysis

The additional 15% increased guaranteed diversion (from 55% to 70%) provides exceptional value in meeting the City's diversion goal and Staff recommends Crown Disposal to provide the service.

If service type does not include Optional Services, Staff would recommend Athens, although Crown Disposal's cost proposal would still guarantee a higher diversion rate (65% to 50%) at a 3.6% increased cost over Athens and still merit consideration.

HF&H did extensive research on the haulers ability to provide service, including corporate franchise ability, customer satisfaction, business plan to accomplish the work, environmental violations, and past/outstanding lawsuits involving the company. It is HF&H Consultants' opinion that all three haulers can provide the services required of the Manhattan Beach contract.

Additional Considerations

Last, it is difficult to quantify and prioritize very important aspects of the next hauler including satisfaction of service of the hauler and ease of transition from current hauler to a new hauler. In the review of hauler's customer satisfaction of their current/previous customers, HF&H found Athens and Crown to be rated equally (4.2 of possible score of 5), and Waste Management rated a 4.0.

Essentially, it is statistically equivalent and underscores the notion that most customers develop an allegiance to whoever their hauler is. Staff believes that once in place, Crown will provide a

level of service to the resident comparable to the current hauler.

With regard to ease of transition, Staff believes that the most significant public impact will be that of the residential user selecting a cart size and returning/receiving carts. This will occur irrespective of the hauler selected and likely diminish after cart swap out, and as new drivers become familiar with routes. Customer service impacts will be minimized with efficient, professional service provided by both the existing and new haulers.

Greater transition impacts will be felt by City Staff because of the entry of new billing information and the establishing of relationships necessary for the administration of the new contract. While undoubtedly, it would be easier for Staff to continue with an incumbent hauler because of the positive professional relationship, it should not be considered significant and certainly one that would not outweigh the public benefit of the high diversion and cost benefits of the new service.

Optional Services

An explanation of each of the Optional Services follows:

OPTIONAL SERVICES MATRIX

SECTOR	Door-to-Door HHW Pick-up	City-Wide Commercial and Multi-Family Bin Mixed Waste Processing	Residential Food Waste Collection*	Commercial Food Waste Collection*
Residential	YES		YES	
Commercial		YES		YES

*Request for Proposal package listed Food Waste program as a 90 day pilot.

Athens is offering a complete Residential and Commercial food waste recycling program at an additional cost.

Crown is offering the complete Residential and Commercial food waste recycling program as part of its basic cost and service.

Waste Management does not have the infrastructure to implement a program at the start of contract, but will comply with the Request for Proposal requirements to perform the 90 day food waste pilot program.

Door-to-Door Household Hazardous Waste (HHW) Pick Up

The Door-to-Door HHW Program is a convenient appointment based, unlimited at-home pick-up of household hazardous chemicals, universal waste and electronic waste for all Manhattan Beach single and multi-family residents. The residents may dispose of an unlimited amount of HHW from their garages, cabinets, and storage units through the appointment-based program. On the appointment day, residents would place their HHW in the designated area for their residence (area to be determined at time appointment is made, though *not at the curb*).

This program stems from consistent requests to the Public Works Department for a more convenient, weekday-friendly way to dispose of HHW. Residents have shared over and over again that the hassle of loading hazardous materials into their personal vehicles and driving them to another city only on weekends is not helpful. Also, residents have shared that they would

participate in disposing of HHW properly if there was a more convenient program available.

Examples of Household Hazardous Wastes and what makes them Hazardous:

- Batteries--Includes all batteries, AAA, AA, C, D, button cell, 9-volt, and all others, both rechargeable and single use --Cadmium, Copper and (in older batteries) Mercury
- Cell Phones-- Antimony , Arsenic, Beryllium, Cadmium, Copper, Lead, Nickel, Zinc
- Computers and Computer Monitors-- Arsenic, Cadmium, Lead, PCBs
- Electronic Devices-- Lead
- Fluorescent Lamps-- Mercury
- Thermometers-- Mercury
- Non-empty Aerosol Cans-- Propane, Butane, Pesticides
- Televisions-- Arsenic, Cadmium, Lead, PCBs

*City-Wide Commercial and Multi-Family Mixed Waste Bin Processing
(to recover additional recyclables)*

The City-Wide Mixed Waste Processing Program removes recyclable material from the trash at a Material Recovery Facility (MRF) in order to increase diversion rates and reduce landfill tonnage. While residential recycling rates exceed 50-60% diversion, commercial (which includes Multi-Family) recycling rates are estimated at 20-30%. These low diversion rates inspired the Environmental Task Force to recommend the Mixed Waste Processing Program. Many factors contribute to the low diversion rates including employee training, space and design for recycling inside businesses and multi-family complexes, and employee and multi-family resident turnover. *This program is recommended to be implemented in addition to the recycling program that is in place. It will not replace recycling cans, carts or bins.* It is a joint effort to capture all unnecessary waste from entering the landfill; this program provides the assistance to remove recyclables from the trash so that they can be made into new products instead of filling up the landfill.

The Request for Proposal requires that the hauler *recover* 1,365 tons per year of recyclables from the commercial and multi-family trash bins. In addition to this requirement, the Request for Proposal required haulers to submit pricing to *recover* an additional 2,184 tons of recyclables from commercial and multi-family trash bins. These additional 2,184 recovered tons represent approximately 5% of the total waste collected currently by the city's hauler that is transported to a landfill. If the Optional Service is selected by Council, a total of 3,549 tons of recyclables will be *recovered and recycled* instead of landfilled. The cities of Redondo Beach and West Hollywood utilize similar programs to increase diversion rates and reduce landfill tonnage from their business community.

Residential Food Waste Program

The Residential Food Waste program includes common recyclables and green waste that is diverted from the trash and is putrescible, otherwise known as "food waste." Landfills accept millions of pounds of food waste each year.

According to the US Department of Agriculture, Americans throw away more than 25 percent of the food prepared, about 96 billion pounds of food waste each year. Food waste includes uneaten food and food preparation scraps from residences or households, and commercial establishments

like restaurants, grocery stores, and cafeterias. The food service industry estimates that 4% to 10% of food purchases become waste before ever reaching a guest.

Food waste diversion programs are quite common in Northern California; however few are found in Southern California due to the few number of composting facilities. Although the Request for Proposal required only a 90 day pilot program to be conducted in summer 2012, two proposers, Athens and Crown, have the infrastructure in place to begin a complete residential food waste diversion program in the first year of service. Food waste will be included with the green waste in the green waste bin and “reverse sorted” at the companies’ facilities. Waste Management’s proposal included compliance for the 90 day pilot program in summer 2012.

Commercial Food Waste Program

The Commercial Food Waste program is required in the Request for Proposal as only a 90 day pilot program to be conducted in summer 2012. However, the same two proposers, Athens and Crown, who have the capabilities to launch a formal residential food waste program can launch the same for commercial in the first year of service. This includes restaurants, grocery stores, office buildings with kitchens, schools, etc. Waste Management’s proposal included compliance for the 90 day pilot program in summer 2012.

Summary of Hauler Proposal Data

The evaluation of the various proposals is an interactive process whereby the City established core service requirements and consideration of various Optional Services. Haulers submitted proposals with costs and modifications to the requirements that represented the strength and capabilities of their company. Because of the variety of ways of evaluating proposals, Tables 1-11 in Attachment 1 assist in comparing costs and performance of the three proposers.

CONCLUSION:

Unlike the evaluation of many public contracts where the recommendation is generally of low cost, the solid waste contract involves multiple criteria that have different value, for different reasons for different people. Adding to that are the haulers that have different strengths in service, cost, and experience, all making the selection more difficult.

With these considerations, Staff recommends that the City Council select the service level to include all Optional Services and enter into the attached contract with Crown Disposal.

Staff recommends that the Finance Subcommittee review the attached (3) final draft refuse franchise agreements and provide a recommendation for award of contract for the February 15, 2011 City Council meeting.

Based on the types of services proposed, Staff recommends Crown Disposal for the seven year franchise agreement to include all services, including Optional Services, with an estimated first year cost of \$3,150,000.

Attachments:

- (1) Summary of Hauler Proposer Data: Tables
- (2) Summary of Solid Waste Services Proposals (HF&H Consultants)

Agenda Item #: _____

- (3) Evaluation Summary (HF&H Consultants)
- (4) Final Draft Franchise Agreement – Athens Services
- (5) Final Draft Franchise Agreement – Crown Disposal
- (6) Final Draft Franchise Agreement – Waste Management

Cc: Laith Ezzet, HF&H Consultants, LLC
Bruce Moe, City of Manhattan Beach Finance Director

Attachment 1
 Summary of Hauler Proposal Data: Tables
 January 24, 2011 Finance Subcommittee Meeting

Tables 1-5 show comparative data with Optional Services (Staff recommended). Table 6 shows guaranteed diversion rates with and without Optional Services, and Tables 7-11 show comparative data *without* Optional Services.

The Tables include:

1. Monthly Residential Rate With Optional Services
2. Monthly Multi-Family Dwelling Rates With Optional Services
3. Monthly Commercial Bin Rates With Optional Services
4. First Year Revenue With Optional Services
5. Seven Year Revenue With Optional Services
6. Hauler Diversion Rates With & Without Optional Services
7. Monthly Residential Rate Without Optional Services
8. Monthly Multi-Family Dwelling Rates Without Optional Services
9. Monthly Commercial Bin Rates Without Optional Services
10. First Year Revenue Without Optional Services
11. Seven Year Revenue Without Optional Services

Residential Rate Comparison WITH OPTIONAL SERVICES

The residents of Manhattan Beach currently pay a flat rate every month for **trash carts only**; recycling and green waste service is at no additional charge. The City Council accepted the Environmental Task Force’s recommendation to change residential billing to a tiered rate structure, otherwise known as “Pay as You Throw.” This style of billing bases rates on size and quantity of **TRASH CARTS ONLY**. *Recycling and green waste services will still be at no additional charge.* Tiered rate structures promote waste reduction and incentivize the residents through reduced trash rates to send less to the landfill. According to a study conducted by HF&H Consultants, LLC, roughly half of California cities use a tiered rate structure, and as old contracts expire, the industry trend is to move toward tiered rates.

Table 1:
 MONTHLY RESIDENTIAL RATE WITH OPTIONAL SERVICES

Proposer	Refuse Cart Size* (sorted low to high)		
	32-Gallon	64-Gallon	96-Gallon
Crown **	\$ 7.10	\$ 11.10	\$ 15.10
Athens	\$ 7.12	\$ 11.12	\$ 15.12
WMLA – Used Carts***	\$ 8.65	\$ 12.65	\$ 16.65
WMLA – New Carts	\$ 9.51	\$ 13.47	\$ 17.47
WRI	\$ 13.63	\$ 17.63	\$ 21.63
Current Rate (no HHW, food or mixed waste processing)	\$12.02 – unlimited service		

* Includes optional service (HHW). Does not include City Recovery Costs.

**The residential & commercial food waste programs are part of Crown’s base proposal to reach 70% diversion.

*** RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Multi-Family Dwelling Cart Rate Comparison

Multi-Family Dwelling (MFD) customers who utilize carts will pay a flat fee per dwelling unit up to 9 units. Table 9 below shows the rates for MFD’s with 2, 3, and 4 units. Properties with more than 9 units are required to utilize bin service for the tenants and will be billed commercial bin rates.

Table 2:

MONTHLY MULTI-FAMILY DWELLING CART RATE WITH OPTIONAL SERVICES
(FLAT RATE)

Proposer	Number of Units (sorted low to high)		
	2 Units	3 Units	4 Units
Crown	\$ 21.65	\$ 32.75	\$ 43.85
Athens	\$ 21.86	\$ 32.98	\$ 44.10
WMLA – Used Carts	\$ 26.12	\$ 38.98	\$ 51.83
WMLA – New Carts	\$ 27.88	\$ 41.63	\$ 55.36
WRI	\$ 30.36	\$ 40.36	\$ 50.36
Current Rate	\$ 22.83	\$ 33.05	\$ 43.27

Commercial Cart and Bin Rate Comparison

Commercial rates are currently in a tiered structure, and will continue to do so in the awarded contract. Currently commercial customers only have the option of using multiple 32-gallon cans or large bins. In the new franchise agreement, commercial customers will have a choice of 32, 64 or 96 gallon carts as well as the large bins. This flexibility will provide businesses with multiple cans the opportunity to consolidate to one larger cart.

Table 3:

MONTHLY COMMERCIAL BIN RATE WITH OPTIONAL SERVICES: (1) 2-YARD BIN

Proposer	Refuse Cart Size*		
	(1) 2-yard bin, 1x p/ week	(1) 2-yard bin, 2x p/ week	(1) 2-yard bin, 3x p/ week
Crown	\$ 72.00	\$ 105.11	\$ 145.00
Athens	\$ 55.29	\$ 104.83	\$ 154.37
WMLA – Used Carts**	\$ 78.51	\$ 122.69	\$ 163.56
WMLA – New Carts**	\$ 78.51	\$ 122.69	\$ 163.56
WRI	\$ 108.90	\$ 213.40	\$ 325.60
Current Rate (no food or mixed waste processing)	\$ 66.73	N/A	N/A

* Does not include City Recovery Costs.

**Waste Management will only commit to perform the 90 day pilot program in summer 2012.

Seven (7) Year Rate Revenue (Tables 5 & 11) and First Year Rate Revenue (Tables 4 & 10)

In each of the proposers bid package, they are required to submit their projected first year revenue. Since each hauler may amortize their contract costs differently and each proposer has unique disposal cost adjusters, the first year rate revenue is not always the “tell tale sign” of a hauler’s affordability. The most reasonable basis for cost comparison is the contract-term revenue, which in the case of Manhattan Beach is seven (7) years. HF&H Consultants, LLC calculated the seven year revenue for each proposer utilizing the first year revenue (provided by the hauler) and each hauler’s individual adjustment components.

Table 4:
FIRST YEAR REVENUE WITH OPTIONAL SERVICES

Proposal	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	\$ 3,051,000	---
Crown	\$ 3,150,000	3.0%
WMLA/Used Carts*	\$ 3,533,000	15.7%
WMLA	\$ 3,673,000	20.3%
Current Annual Revenue (no optional services included)	\$ 3,152,000	3.3%

* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 5:
SEVEN YEAR REVENUE WITH OPTIONAL SERVICES

Proposal	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	\$ 23,400,000	---
Crown	\$ 23,800,000	1.7%
WMLA/Used Carts*	\$ 27,100,000	15.8%
WMLA	\$ 28,200,000	20.5%

* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Overview of Proposers' Diversion

Table 6:

HAULER DIVERSION RATES WITH & WITHOUT OPTIONAL SERVICES

Proposal	WITH OPTIONAL SERVICES Guaranteed Diversion*	WITHOUT OPTIONAL SERVICES Guaranteed Diversion
Athens/Food Waste	55%	50%
Crown/Food Waste**	70%	65%
WMLA/Used Carts	57%	50%
WMLA/New Carts	57%	50%

*Athens provided an additional cost for permanent food waste diversion programs. Crown included permanent food waste collection in its base proposal and WMLA was not offering such a program at this time.

** Crown proposed to mixed waste process all residential trash and commercial trash at no additional cost, therefore reaching a higher diversion goal than the other proposers.

Table 7:

MONTHLY RESIDENTIAL RATES WITHOUT OPTIONAL SERVICES

Proposer	Refuse Cart Size* (sorted low to high)		
	32-Gallon	64-Gallon	96-Gallon
Athens	\$ 6.18	\$ 10.18	\$ 14.18
Crown**	\$ 6.55	\$ 10.55	\$ 14.55
WMLA – Used Carts***	\$ 8.25	\$ 12.25	\$ 16.25
WMLA – New Carts	\$ 9.11	\$ 13.11	\$ 17.11
WMLA Previously Negotiated for 07/01/201	\$ 11.91	\$ 13.61	\$ 15.44
WRI	\$ 13.27	\$ 17.27	\$ 21.27
Current Rate	\$12.02 – flat rate, unlimited service		

* Excluding optional services. Does not include City Recovery Costs.

**The residential & commercial food waste programs are part of Crown's base proposal to reach 70% diversion.

*** RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 8:
MONTHLY MULTI-FAMILY DWELLING CART RATE WITHOUT OPTIONAL SERVICES
(FLAT RATE)

Proposer	Number of Units (sorted low to high)		
	2 Units	3 Units	4 Units
Athens	\$ 20.36	\$ 30.54	\$ 40.72
Crown*	\$ 21.10	\$ 31.65	\$ 42.20
WMLA – Used Carts	\$ 22.17	\$ 33.26	\$ 44.34
WMLA – New Carts	\$ 23.69	\$ 35.54	\$ 47.38
WMLA Previously Negotiated for 07/01/11	\$ 25.47	\$ 36.88	\$ 48.28
WRI	\$ 30.00	\$ 40.00	\$ 50.00
Current Rate	\$ 22.83	\$ 33.05	\$ 43.27

*Crowns base rate includes the Food Waste program.

Table 9:
MONTHLY COMMERCIAL BIN RATE WITHOUT OPTIONAL SERVICES:
(1) 2-YARD BIN

Proposer	Refuse Cart Size*		
	(1) 2-yard bin, 1x p/ week	(1) 2-yard bin, 2x p/ week	(1) 2-yard bin, 3x p/ week
Athens	\$ 55.29	\$ 104.83	\$ 154.37
Crown	\$ 72.00	\$ 105.11	\$ 145.00
WMLA – Used Carts**	\$ 67.68	\$ 105.77	\$ 141.00
WMLA – New Carts**	\$ 67.68	\$ 105.77	\$ 141.00
WRI	\$ 99.00	\$ 194.00	\$ 296.00
Current Rate (no food or mixed waste processing)	\$ 66.73	\$ 100.10	\$ 133.45

* Does not include City Recovery Costs.

** Waste Management will only commit to perform the 90 day pilot program in summer 2012.

Table 10:
FIRST YEAR REVENUE WITHOUT OPTIONAL SERVICES

Proposal	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	\$ 2,846,000	--
Crown	\$ 3,047,000	7.1%
WMLA/Used Carts*	\$ 3,295,000	15.8%
WMLA/New Carts	\$ 3,435,000	21%
Current Annual Revenue	\$ 3,152,000	11%

* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 11:
SEVEN YEAR REVENUE WITHOUT OPTIONAL SERVICES

Proposal	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	\$ 22,300,000	--
Crown	\$ 23,000,000	3.1%
WMLA/Used Carts*	\$ 25,300,000	13.4%
WMLA/New Carts	\$ 26,300,000	17.9%

* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Attachment 2
City of Manhattan Beach
Summary of Proposals (in alphabetical order)

	PROPOSING ENTITY	REGIONAL HEADQUARTERS	MANHATTAN BEACH CONTRACT REVENUE AS A % OF COMPANY REVENUE	PROPOSED START DATE
Athens	Arakelian Enterprises, Inc. dba Athens Services	City of Industry	2%	June 1, 2011
Crown	Crown Disposal Co., Inc.	Sun Valley	7%*	June 1, 2011
Waste Management	USA Waste of California, Inc., dba Waste Management of Los Angeles	Long Beach, CA	<0.01%	June 1, 2011
Waste Resources	Waste Resources, Inc.	Los Angeles	36%	July 1, 2011

* Calculation does not include revenue from sister company Community Recycling and Resource Recovery reported as \$50 million/year.

	PROPOSED FIRST YEAR RATE REVENUE *		PROJECTED 7-YEAR RATE REVENUE**	PROPOSED DIVERSION RATE	# OF CONTRACT EXCEPTIONS ACCEPTED BY CITY
	WITHOUT OPTIONAL SERVICES	WITH OPTIONAL SERVICES			
Athens	\$2.8 million	\$2.9 million	\$22.3 million	50%	0
Athens - food waste	\$3.0 million	\$3.1 million	\$23.0 million	55%	0
Crown - food waste	\$3.0 million	\$3.1 million	\$23.0 million	70%	0
Waste Management - Used Carts	\$3.3 million	\$3.5 million	\$25.3 million	50% 1 st year, increasing to 55% in 6 th year	4
Waste Management - New Carts	\$3.4 million	\$3.7 million	\$26.3 million		4
Waste Resources	\$5.1 million	\$5.3 million	\$39.4 million	44%	0

* Based upon average proposed cart distribution assumptions.

** Based upon proposed cost component weightings and proposed disposal cost adjustment factors.

	RESIDENTIAL HHW DOOR-TO-DOOR PROGRAM	COMMERCIAL/MULTI-FAMILY BIN RATE INCREASE TO PROCESS 100% OF BIN WASTE	RATE CAP/DISPOSAL COMPONENT ADJUSTMENT	LOS ANGELES COUNTY EXPERIENCE # OF EXCLUSIVE FRANCHISES
Athens	\$0.38 per household per month	Included at no additional charge.	Disposal cost component, including landfill and green waste, adjusted by the change in the CPI (All urban consumers - Los Angeles, Riverside, Orange County), or 5%, whichever is less. Any increase in excess of 5% will be carried forward to next year. Under option without food waste there is a one-time extraordinary adjustment for green waste processing costs due to closure of Puente Hills Landfill in 2013.	19
Crown	\$0.55 per household per month	Included at no additional charge.	First year rate adjustment waived. Processing of incoming tonnage, including green waste: change in CPI. Disposal of residue: change in actual average per ton disposal cost, capped at dollar change in the Puente Hill Landfill gate rate.	4
Waste Management	\$0.40 per household per month	16% \$173,000/year	Disposal/green waste rate adjustment factor: CPI for all urban consumers, all items less food and energy index (US city average), capped at 5% per year.	25
Waste Resources	\$0.36 per household per month	10% \$181,000/year	Disposal cost component adjusted based upon the change in the average rate at Puente Hills Landfill, California Waste Services, and WRI's facility Waste Resources Recovery.	1

DRAFT

FRANCHISE

AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

* * *

January 20, 2011

DRAFT

FRANCHISE
AGREEMENT
BETWEEN
CITY OF MANHATTAN BEACH
AND
ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES
FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

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4. Rate Adjustment Formula
5. Exhibit Deleted
6. Company’s Faithful Performance Bond
7. Notary Certification
8. City Sponsored Special Events
9. Optional Programs
10. City Hazardous Waste Manifest
11. Commitment to Environmental Sustainability

RECITALS

This Franchise Agreement (Agreement) is entered into this __ day of _____, 2011, by and between the City of Manhattan Beach (City) and Arakelian Enterprises, Inc. dba Athens Services (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the City seeks to contract with a solid waste hauler to work together to exceed AB 939 goals by implementing sustainable programs and practices to reduce landfill tonnage, increase producer responsibility, reuse, repair and recycling, and educate the community to sustain the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, in response to a Request for Proposals, Company has submitted a proposal to City and City selected Company on the competitive advantages of that proposal over other proposals received by City; and,

WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 5.24 of the Manhattan Beach City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.2 Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Green Waste, to be Collected by Company pursuant to Section 3.6.3.

1.3 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. 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.

1.4 Agreement

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.5 Section Deleted

1.6 Section Deleted

1.7 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

1.8 Bin

"Bin" means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

1.9 Bulky Waste

"Bulky Waste" means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); Electronic Waste (including stereos,

televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.10 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

1.11 Can

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

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 30 and no greater than 101-gallons.

1.13 City

"City" means the City of Manhattan Beach, a 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.

1.14 Collect/Collection

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

1.15 Commercial and Industrial

"Commercial and Industrial" refers to property, or Owners of property, upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.16 Company

"Company" means Arakelian Enterprises, Inc. dba Athens Services, a California corporation and its officers, directors, employees, agents, companies and subcontractors.

1.17 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.18 Complaint

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.19 Composting

"Composting" means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

1.20 Construction and Demolition Waste

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

1.21 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

1.22 CPI

"CPI" means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index – U.S. city average.

1.23 Customer

"Customer" means the Person having the care and control of any Premises in the City receiving Solid Waste Collection service from the Company.

1.24 Disposal

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

1.25 Disposal Site(s)

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

1.26 Electronic Waste or E-Waste

"Electronic Waste" or "E-Waste" means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

1.27 Environmental Laws

"Environmental Laws" means all federal and State statutes, county, local and the 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 Toxic Substances Control 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.

1.28 Facility

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

1.29 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

1.30 Food Waste

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste programs included in Sections 3.2.7, 3.2.8 and 3.2.9, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,
- Tea bags, coffee grounds and filters.

1.31 Green Waste

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

1.32 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.33 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.34 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

1.35 Materials Recovery Facility

“Materials Recovery Facility” means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

1.36 Mixed Waste Processing

“Mixed Waste Processing” means the separation and sorting of recyclables and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

1.37 Multi-Family

"Multi-Family" means pertaining to any Residential Property with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

1.38 Section Deleted

1.39 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.40 Permanent Rolloff Box Service

“Permanent Rolloff Box Service” means the Collection of Solid Waste generated from ongoing operations at a Customer’s place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premise that would otherwise be Collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.41 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, town, city, or special purpose district.

1.42 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.43 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.44 Rate Year

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.45 Recycling

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.46 Recyclable Materials

"Recyclable Materials" means Residential, Commercial or Industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.47 Refuse

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.48 Residential

"Residential" refers to property, or Owners of property, which is used for Residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.49 Rolloff Box

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

1.50 Sand Section

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

1.51 Single-Family

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

1.52 Solid Waste

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.54 State

"State" means the State of California.

1.54 Temporary Service

"Temporary Service" means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a

Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business' ongoing operations is not included.

1.55 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

1.56 Universal Waste

"Universal Waste" means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

1.57 Zero Waste

"Zero Waste" means a focus on reducing landfill tonnage by reducing consumption, minimizing waste, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired or Recycled back into nature or the marketplace.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Administrative and Extension Fees

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

Additionally, the Company shall pay to the City an Extension Fee equal to \$60,000 (\$60,000) per month for each month the start of service is delayed beyond June 1, 2011 if this delay is due to City Council's award of this Agreement being extended past February 15, 2011. Company will endeavor to meet the start date in June even if delayed. However, if award of this Agreement is delayed and Company cannot start, and if the current contractor charges City this fee, Company will pay the fee when the cost is incurred by City for the additional cost paid to the previous contractor for the extension of the prior agreement.

2.3 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

2.4 Effective Date

The effective date of this Agreement shall be _____ ("effective date").

2.5 Term of Agreement

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 8.

- d) Effectiveness of the City Council Action. The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Proposition 218

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of Article XIID of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIIC, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

City agrees to meet and confer with Company prior to City's termination of this Agreement under this section to determine whether City and Company can negotiate a reduction in Company Compensation to offset the protested rate increase.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

2.9 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and

transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;
- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- e) Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- f) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- g) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;

- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold.
- m) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- n) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the Company under this Agreement. City may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Green Waste from City landscaping maintenance operations, contract services, “niche” Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

The City may direct the Company 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 that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the 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 of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- 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.

2.10.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within

ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

2.12 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.13 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (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 the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.15 Business License

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

The work to be done by the Company 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 the Company 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 the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

3.1.1 Residential Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with new Refuse Carts of 96- 64- or 32-gallons, as requested by Customer as described in Section 3.7.1.1. Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

Customers may request “Backyard Service” for an additional charge in accordance with the approved rate schedule. Backyard Service means that Company removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer’s designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge whether or not pickup was called in. If pickup was not called in, a notice shall be left for the Customer indicating a Cart overage Collection was made.

Company shall provide a three-month grace period at the start of service in which it will leave notices on Carts when overages are Collected, informing Customers as to this new policy, including how to call for an additional or larger Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse placed out for Collection in the Residential Customer’s own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

Company shall provide Bin service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family, Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located.

Customers that require twice per day Collection shall be charged as though they had twice the number of Containers being Collected once per day.

Customers may lease from Company or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

3.1.3.2 Temporary Bin Services

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3.3 Commercial Cart or Can Service

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

3.1.3.4 Locking Bins

Company may charge for locking bin service in accordance with the approved rate schedule. No additional fees shall be permitted for provision or installation of the lock.

3.1.3.5 Scout Service/Push-Out Service

Company may not charge an additional fee for scout service, whereby a second vehicle is used to position the Container for Collection, or push-out service, whereby the driver must move the Container a significant distance for Collection.

3.1.4 Rolloff Box Service

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 3. Customers may lease from Company or third parties compactor Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff Boxes remains within the scope of this Agreement, unless otherwise excluded per Section 2.9.

3.1.5 On-Call Bulky Waste Pickup

Company shall provide Bulky Waste pickup service to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day.

Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)
- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

3.1.5.1 Single and Multi-Family Customers

Single and Multi-Family Customers, whether Bin, or Cart Customers, are entitled to three Bulky Waste pickups per dwelling unit per year at no additional charge, with additional pickups Billed in accordance with the approved rate schedule in Exhibit 3. Customers may place up to three (3) items out for Collection per pick-up.

3.1.5.2 Commercial Customers

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 3, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

3.1.6 Commercial Container Overflow Procedures

3.1.6.1 Service Level Upgrade

Customers using Bins, Roll-Off Boxes, and Commercial Carts and Cans that regularly produce more Solid Waste 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 Container, Company 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 the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container in a three-month period, Company 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 will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period – Upon the third event of an overfilled Container in a three-month period, Company shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized

Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

3.1.6.2 Container Overage Fee

If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide new 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Section 3.7.1.1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

3.2.2 Commercial Recycling

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

Commercial Recycling Site Visits - Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers' Premises not currently subscribing to recycling service and meet with the Customer for the purpose of establishing a Recycling Program. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling

program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type.

At the end of the first six (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse service levels including number and size of Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

Company will visit all new Customers added after the start of this Agreement within two weeks of the start of new service. Company will continue to conduct on-site visits to Multi-Family Bin and Commercial Customers throughout the term of the Agreement to implement new and optimize existing Recycling programs for each Customer. A list of new account and ongoing account visits, including all the information required above, shall be provided to the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers – Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for seven-gallon Rehrig-Pacific Containers were approximately \$10.00 per Container.

3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City’s Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
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August 1 st , 2011	\$28,000	July 1 st , 2015	\$32,000
July 1 st , 2012	\$29,000	July 1 st , 2016	\$33,000
July 1 st , 2013	\$30,000	July 1 st , 2017	\$34,000
July 1 st , 2014	\$31,000	July 1 st , 2018*	\$35,000

* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

3.2.4 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent Construction and Demolition Waste that is suitable for Recycling from being taken to the landfill by:

- Following the City’s Construction and Demolition Debris Diversion requirements of the Municipal Code;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,
- Contacting contractors on a list provided by the City annually to educate them on Construction and Demolition Waste diversion.

3.2.5 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

3.2.6 Universal Waste

Company shall instruct Customers not to set out universal waste for Collection except through programs included in this Agreement specifically tailored for the Collection of such items, including SHARPS Collection programs, Bulky Waste Collection, or the optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green waste, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

3.2.7 Residential Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Residential Cart Customers. Program shall be subject to City approval. Company shall conduct the approved Residential food waste pilot program at no additional cost to City or ratepayers, beginning July 1, 2012 (unless start date is extended by City).

Pilot program shall be conducted for a minimum of six months. Participants shall include one full Residential route for one day each week. Company shall develop, produce and deliver public education materials to all Customers on the participating route. Materials shall be subject to advance City approval.

Company shall collect baseline tonnage data from this route for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company

shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.2.8 Commercial Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Commercial Food Waste generating Customers. Program shall be subject to City approval. Company shall implement a Commercial Food Waste pilot program for a minimum of six months beginning July 1, 2012 (unless start date is extended by City) for 10% of Food Waste generating Commercial Customers in the City at no additional cost to either City, participants or rate payers.

Prior to the start of the pilot program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Refuse capacity prior to the start of the pilot. Company collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of food waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Commercial food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.2.9 Permanent Food-Waste Program

City may request Company to implement both Residential and Restaurant on-going Food Waste programs at the start of service under this agreement. If City directs Company to implement these permanent programs under this section, Company shall be required to achieve a minimum of 55% diversion rate under Section 3.8.1 and will be compensated in accordance with the alternative food waste rate schedules included in Exhibit 3.

Under the Residential Food Waste program, Company shall educate Residential Cart Customers to place Food Waste in their Green Waste Cart for co-Collection and Composting by Company.

Under the Restaurant Food Waste program, Company shall co-Collect Refuse and Food Waste from food waste generating Commercial Customers. Customers on these routes shall be asked, but not required, to sort Food Waste into compostable bags delivered to Customer at no additional charge by Company and place these bags in their Refuse Containers. Company shall sort the material from these routes to remove and compost bagged Food Waste, and to remove non-compostables from the mixed waste stream and send the remaining Refuse for composting as well.

3.3 Green Waste Program

3.3.1 Residential Green Waste Collection

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one new 96-, 64- or 32-gallon Green Waste Cart in accordance with Section 3.7.1.1. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

3.3.2 Rolloff Box Service

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.3 Holiday Tree Collection Program

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they included ornaments, garlands, and tinsel, and stands.

3.3.4 End Uses for Green Waste

Company shall divert Green Waste materials from Disposal. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by CalRecycle.

3.3.5 Compost Bin Distribution

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill Customer a co-pay amount to be determined by City. The difference between the amount billed to the Customer and the actual cost of the bin to the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the City. City may inform Company as to an annual cap or overall cap on the number of compost bins to be distributed.

Company shall develop a public education flyer for this program and provide it to City for distribution. Company, including a Company-provided instructor, shall conduct three annual, one-hour composting classes, in May, July and October of each year.

3.3.6 Compost Give-a-ways

Twice per year, Company will provide two 40-yard containers of compost at the location of the City's choosing. Residents may pick up this compost on a first-come-first-service basis using resident-provided bags.

3.4 Warning Notice

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

3.5 Commercial Mixed Waste Processing

Company shall process all Bin Refuse, resulting in recovery of a minimum of 3,549 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not

include any business instruction and therefore does not need to be placed in outreach materials.

3.6 City Services

3.6.1 City Facilities Collection

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, parks, street maintenance operations, and Street Litter Containers (see Section 3.6.4 below). Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required.

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly dispose of hazardous waste that is generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 10. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

In the event that quantities increase by more than 20% from Exhibit 10 levels, City and Company shall mutually agree to additional compensation due Company based upon verifiable costs incurred by Company.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

3.6.4 Street and Park Litter Containers

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, all Solid Waste deposited in City's Street and Park Litter Containers as necessary to prevent overflow at no additional cost at all existing

locations. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

3.6.5 City Sponsored and Non-City Sponsored Events

The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. This shall include providing Containers to Collect and Dispose of all Solid Waste, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source-separated Recyclables. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes and liners at Company's cost.

3.6.6 Emergency Collection and Disposal Service

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

3.6.7 Sharps Collection Program

Company shall provide Sharps containers to requesting Residential Customers, both Single and Multi-Family Cart and Bin Customers. Containers will be mailed to the resident. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$65.00 per container. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in

Exhibit 9, Company may additionally or alternatively arrange for door-to-door Collection of such containers through this program; however, Company shall continue to deliver Sharps containers to residents' door. "Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program. This program will be provided at no additional charge to City or Customers beginning the first day of the start of service under this Agreement.

3.7 Containers

3.7.1 Carts

3.7.1.1 Residential Cart Distribution

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, Customers may request one Cart exchange at no charge each year. After one exchange per year, Customers may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

3.7.1.2 Removal of Existing Containers

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected. Company is responsible for all costs associated with Container collection and Disposal or Recycling. Company may retain any scrap value received from the Recycling of collected Containers.

3.7.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

Carts shall include a minimum of 25% recycled material and be recyclable.

3.7.1.4 Capacity

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

3.7.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

3.7.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

3.7.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color, matching current colors in distribution. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

3.7.1.8 Cart Labeling

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of

HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. The City's logo and, if requested by City, the City website shall appear on the Carts. Company's name and phone number shall be included on a label on the Cart lid (Company's name or logo shall not be visible on the side of the Cart).

3.7.1.9 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Carts. Company shall not hot stamp Company name on Carts.

TRASH, RECYCLING or **GREENWASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English, with graphics and instructions for proper disposal of HHW, and shall place labels on top of all Carts delivered to Customers.

3.7.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

3.7.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70

3.7.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

3.7.2.4 Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

3.7.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

3.7.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

3.7.3 Can Design and Performance Requirements

The Cans shall be manufactured by injection or rotational molding and meet the Can design and performance requirements as specified below. All Cans selected shall be subject to City approval.

3.7.3.1 Capacity

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-

gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

3.7.3.2 Can Handles

The Can handles will provide comfortable gripping area for carrying the Can.

3.7.3.3 Can Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

3.7.3.4 Can Colors

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

3.7.3.5 Identification Markings

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

3.7.3.6 Can Load Capacity

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

3.7.3.7 Can Durability

Cans shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.3.8 Chemical Resistant

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

3.7.3.9 Reparability or Replacement

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

3.7.4 Cart and Can Ownership and Maintenance Responsibilities

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

3.7.5 Bins and Compactors

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Company shall remove graffiti at no additional charge from any Container within twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

3.7.6 Rolloff Boxes

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.8 Diversion Requirements

3.8.1 Hauler Diversion Requirements

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation is 50% of the waste Collected by Company under this Agreement during each year of this Agreement; diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to CalRecycle). If City instructs Company to implement Food Waste diversion programs per Section 3.8.1, this minimum diversion rate shall be 55%. Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants the City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

3.8.2 City-wide Diversion Rate

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the

Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the City under this section that are not otherwise required to be implemented under this Agreement will be implemented in accordance with Section 2.10, under which Company may be entitled to an adjustment in compensation.

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 P.M and 7:30 A.M. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. Company shall adjust the early morning start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven day per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven day per week customers.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes

into a revised plan and review said revised plan with the City within thirty (30) calendar days.

3.9.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. Company will use Collection vehicles model year 2010 or newer. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) years old. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG) at the start of service under this Agreement. Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the Company in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-Off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its 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) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) The Company 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. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing

service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.
- 4) Company shall equip all route vehicles with the Zonar V2J High-Definition GPS/ Vehicle Diagnostics system and enable the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

F. City Inspection Per Code. The 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 applicable provisions of the State Vehicle Code, including all

Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, 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 Manager, which decision shall be final.

3.9.3 Litter Abatement

A. Minimization of Spills. The Company 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 are spilled during Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company 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 the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify

instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

3.9.4 Personnel

The Company 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company'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.

The Company 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. The Company 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company 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.

3.9.5 Identification Required

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

3.9.6 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

3.9.8 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

3.9.10 Job Fair For Displaced Workers

Company will conduct a job fair for displaced Solid Waste employees that previously worked in the City for prior Solid Waste contractor. Company will interview all interested displaced employees and will make offers of employment to all employees meeting Company standards.

3.9.11 Neighborhood Safety Program

Company drivers shall be trained to report unusual or suspicious situations that the drivers may see on route to assist local law enforcement.

3.10 Transportation, Disposal and Processing

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Sites shall be the Chiquita Canyon Landfill, Sunshine Canyon Landfill, El Sobrante Landfill and Puente Hills Landfill and the approved waste-to-energy facilities shall be the Commerce Refuse to Energy Facility (primary) and the Southeast Resource Recovery Facility. The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. In the event that City selects a Disposal Site or other Facility, the City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a change in tip fee or transportation costs.

If City directs Company to a facility other than a Solid Waste Facility selected or owned by Company, and use of this Facility adversely affects the ability of the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the City and Company shall meet and confer and mutually agree on revised obligations under Sections 3.8 and 8.3

3.11 Status of Disposal Site

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

3.12 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 Manhattan Beach Solid Waste. Company may request permission from the City for an exception on a case-by-case basis.

3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in the City. The annual route audit information shall include, at 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);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Whether each individual address is Commercial or Multi-Family;
- Number of Residential Dwelling units at each Multi-Family account;
- Service Level per Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted

to the Public Works Director and one to the City's billing manager. This summary shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total (Residential Cart, Multi-Family Bin, and Commercial);
- Types of billing and service exceptions observed;
- Number of billing and service exceptions by type;
- Total monthly billing, pre-audit;
- Total monthly billing, post-audit (subsequent to corrections of identified exceptions; and,
- Percentage of billing and service exceptions:
 - Percentage of the number of accounts with errors to the total number of accounts served;
 - Percentage of the "net" change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
 - Percentage of the "absolute" change in net monthly billing as a result of the audit to the total "pre-audit" monthly billing.

The report shall include a description of the procedures followed to complete the annual 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. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company's plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

3.14 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made,

through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company 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. The Company 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 the City. In addition to other required notifications, if the Company observes any substances that 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, the Company will immediately notify the Public Works Director or the Public Works Director’s designee.

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

3.15 Hazardous Waste Management Component

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

3.16 Disposal Capacity Guarantee

Company guarantees capacity for 19,500 tons per year of Manhattan Beach Refuse for the term of the agreement at the Chiquita Landfill. With City approval that shall not be unreasonably withheld, Company may replace the guarantee at this landfill with a guarantee at another landfill approved under Section 3.10 above. This guarantee is not a limit on Disposal quantities Collected under this Agreement. Should City tonnage exceed the guaranteed Disposal quantity, Company remains fully responsible for Disposal of all Refuse with no adjustment to compensation.

ARTICLE 4
OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services in subsections A and B below.

A. Compost Bin Co-Pay. The Residential Customers' co-pay for compost bins shall be billed by the Company.

B. Rolloff Box and Temporary Bin Services. In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

4.1.2 City Billing

City shall perform all billing under this contract, other than Rolloff Box service, temporary Bin service, and compost bin co-pays. City reserves the right to direct Company at any time during the Agreement Term to charge Customers for periodic charges such as Bulky Waste pickups, Cart overage pickups, and Bin Container Overage Fees.

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of the City billing Customers. Payment will be based on City's records of services rendered and will be

subject to subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see 4.1.4 below).

4.1.4 Company Responsible for Service Level Accuracy

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt. Failure to notify the City in writing within 45 days shall confirm the Company's approval and acceptance of the payment amount.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

4.1.5 Review of Billings

The Company shall review Billings to customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.6 Suspension of Service Due to Non-Payment

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time

periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.7 Late Fees

Company may assess interest at a rate of 1.5% per month on outstanding balances for services Billed by Company beginning 60 days after invoice is sent. Company may charge insufficient funds fees of no more than \$35.00 per returned check. This section is not applicable to City-billed services, as City pays Company based upon Billings, not receipts.

4.1.8 Franchise Fee

A. Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes Billing of permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

B. Time and Method of Payment

Company shall remit the Franchise Fee payments on or before the thirtieth (30th) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30th) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs),

and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

4.2 Customer Service

4.2.1 Office Hours

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and number of representatives shall be adequate to handle the volume of calls typically experienced on the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

4.2.3 Complaint Documentation

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

4.2.4 Resolution of Customer Complaints

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

4.2.5 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints and assist with waste reduction programs. City shall have the right to approve the Company's choice for a liaison.

Government Liaison shall be the community relations liaison for Manhattan Beach business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his\her physical presence when

requested or appropriate at schools, businesses and business organizations, community events, Environmental Task Force meetings, City Council meetings and workshops, et al.

4.2.6 Service Liaison

Company shall designate in writing a field supervisor (i.e. route manager) as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints, and strategize with City on an on-going basis regarding more efficient Collection practices. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

4.2.7 Customer Service Liaison

Company shall designate a customer service representative to which the City can direct customers that contact the City with Solid Waste service questions. Customers Service Liaison will take responsibility for completing and closing out work orders within the City's designated work order system.

4.2.8 School Outreach Liaison

Company shall designate a School Outreach Liaison to oversee and coordinate all waste reduction activities under Section 4.3.8 below.

4.2.9 Transition Process Office

Company will lease an office/store front in the City during the transition process. Customers will be able to request and obtain Carts or Cans, request information and assistance, learn about sustainability, and have issues handled at this location. This location shall be open, at a minimum, beginning March 2011 through June 2012.

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Zero Waste Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to significantly exceed AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods acceptable to the City. Any outreach material utilizing paper, provided and distributed by the Company, shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall assist the City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to the City. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

- **Initial Cart Selection Mailing** – Company shall prepare and distribute the mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** – At least 30 days prior to August 1, 2011, Company will prepare and mail, using City-provided labels, an initial mailing to Residential and Commercial Customers explaining the transition from the existing programs to the

new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information. For Residential Cart Customers, this mailing will be in addition to the initial mailing requesting Cart Customers to select Cart sizes and numbers.

- **Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an “e-book” or “e-magazine” format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.
- **Green Street Scene** – Company shall provide a web-based Recycling program and educational tool “The Green Street Scene” to educate and distribute information to Customers. Company may replace “The Green Street Scene” with an alternative, comparable interactive media subject to City’s approval.
- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract is in effect, using City-provided mailing labels.
- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City’s request and with City’s review and approval of the materials. Notices will be mailed by the City with customer’s bills, if size of the item

and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.

- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners' associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the Company shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material.

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Zero Waste Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Zero Waste programs.

4.3.5 Use of "Manhattan Beach Recycles" Program Name

The program name "Manhattan Beach Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. City confers a revocable license to Company to use the name "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

Company shall provide in-unit Recycling Containers to each Multi-Family Bin Customer Dwelling Unit upon request of individual Dwelling Unit, property owner or manager. In-unit Containers shall be hot stamped or labeled with items that may be placed in the Recycling Container, and shall not carry Company logo and shall become the property of the City upon distribution. City logo may be used. Company will provide all property managers and Residents with Bin service with Recycling program guidelines, posters to be placed in laundry rooms, refuse/recyclable container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin Customer service. Company shall contact each Multi-Family Customer building owner or property manager by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the recyclables containers.

Company shall prepare and mail a brochure with recycled content and labeled “Made from Recycled Paper” at least once per year to each Multi-Family Dwelling unit that does not individually receive semi-annual and quarterly notices under Section 4.3.2; brochure shall describe all Solid Waste programs and holiday schedules as they apply to Multi-Family Cart Customers and to Residential Bin Customers.

Company commits a minimum of 150 hours of Company staff, or third-party contractor, time per year towards meeting Multi-Family outreach efforts as described in this section.

4.3.7 Commercial Outreach Recognition Program

Company commits a minimum of 350 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

Green Business Certification Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with an award to be mutually agreed upon by City and Company.

Zero Waste Green Works – Promoting Recycling at the Work Place

Company will provide businesses with recycled-content prizes such as reusable water bottles, reusable grocery bags, and/or other incentives for managers to provide to employees who contribute to the business' Zero Waste green program.

Company will provide business managers with promotional information, flyers and instructional posters made from recycled paper and labeled "Made from Recycled Paper" to implement a comprehensive waste reduction and recycling program, including information on what cannot be placed in the recycling container (i.e.: HHW).

Company shall provide initial and on-going consultation and support to businesses who request it to ensure long term success of their business' waste reduction and recycling program.

Carpet, Carpet Padding and Textiles

Company will recover and Recycle textiles, synthetic and natural fiber carpet and carpet padding Collected on Bin Refuse routes. For material that does not fit in Customers' Refuse Bins, Customers may call in for Bulky Item Collection of the material, which will be Recycled. Regular Refuse Bulky Item rates will apply.

4.3.8 School Zero Waste Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District and private schools, to promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative recycling containers to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;

- Conduct a minimum of one assembly promoting recycling at each school in the City each year;
- Education and training on proper recycling and waste reduction techniques to students and teachers and web-based resources for the district and schools' websites;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program;
- Proper signage for all school sites;
- Provide teachers with sample lesson plans and activity sheets made from recycled paper and labeled "Made from Recycled Paper" on relevant topics on an as requested basis; and,
- Contact each school at least once per semester to offer all services included in this section. City or school may request that more frequent contacts be made. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at schools, Company shall make an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management,

janitorial staff, faculty and student volunteers to ensure that improved recycling and waste reduction techniques have been implemented.

Company commits a minimum of 500 hours of Company staff, or third-party contractor, time per year towards meeting School outreach efforts as described in this section. Time allocated to contacting schools to offer programs shall not be counted towards minimum.

4.3.9 Recycling Facility Tours

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

4.3.10 Additional Recycling and Take-Back Programs

Company will work with local businesses to continue and improve existing take-back programs.

Company shall conduct quarterly waste characterizations of the Residential Cart Refuse waste stream for the term of the Agreement to evaluate how well Recycling programs are working. Company will provide data to City.

4.3.11 Full-Time Outreach and Education Position

Company shall hire a full-time employee dedicated to the City of Manhattan Beach to address outreach, community education, training and sustainability requirements under this Agreement and the goals of the City's Environmental Task Force. Company will consider employment for current employees serving such needs, if displaced.

4.4 Waste Generation/Characterization Studies

Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Company 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 (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Company 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 5

COMPANY COMPENSATION AND RATES

5.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

5.2 Initial Rates

The Company Compensation from the start of service under this Agreement through June 30, 2012 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2012, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline. If any rates would decline based upon Section 5.4 calculations and a rate decrease is not implemented, the subsequent rate adjustment shall be based upon the average changes in indices since previous rate adjustment instead of the average change over the prior year.

The rate adjustments shall apply to the Company Compensation rates included in Exhibit 3. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

5.4 Method of Adjustments

5.4.1 General

For Rate Years beginning July 1, 2012, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

5.4.2 Cost Components for Rate Adjustment Indices

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor (1)</u>
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	29%	69%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	11%	20%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	5%	0%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste/ Organics (if applicable)	44%	N/A	Consumer Price Index for All Urban Consumers (CUURA421SA0), all items, Los Angeles-Riverside- Orange County or 5%, whichever is lower, with adjustment above 5% rolled forward to subsequent year
Transformation	4%	N/A	Actual change in the per ton gate rate at the Commerce Waste-to-Energy facility
All Other	7%	11%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

5.4.3 Rate Adjustment Steps

Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the

December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 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.

Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

5.5 Extraordinary Adjustments

Company may request an adjustment to maximum rates at reasonable times other than that allowed under Section 5.3 and 5.4 of this Agreement in the event of extraordinary changes in the cost of providing service under this Agreement. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of the rate based on an increase or decrease in a direct per ton surcharge assessed at the disposal site or transfer station by Federal, State or local regulatory agencies after the effective date of this Agreement, to the extent the percentage change in these adjustments exceed the cumulative percentage change in the Disposal component adjustments granted under Section 5.3.

For each request for an adjustment to the maximum rates that Company may charge Customers brought pursuant to this section, Company 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 Company in preparing the estimate. Company 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 Company's annual financial statements in connection with the City's review of Company's rate adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

City shall review Company's request and, in City's sole judgment and absolute 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 Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

5.6 Puente Hills Closure Extraordinary Rate Adjustment for Green Waste

Note: The following extraordinary rate adjustment is not applicable if City implements the Residential Food Waste program described in Section 3.2.9, as this Residential Green Waste is to be composted from the start of service and not sent to Puente Hills as alternative daily cover under the Food Waste program:

If City does not implement the Residential Food Waste program described in Section 3.2.9, Company will deliver 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. Company shall be entitled to a one-time 5.5% 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 Company delivers the Green Waste for composting and full diversion credit. This shall be considered to entirely compensate Company 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.

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.
- c) Results of the most recent route audit as described in Section 3.13.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results,

feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

6.2 Performance Satisfaction Survey

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1. City shall notify Company of its desire for such a survey at least 90 days in advance of the Solid Waste Services and Performance Review Meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Company. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Company to send out separate Single Family and Multiple-Family/Commercial surveys. Company shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may choose to write or re-write the survey. City may require that Company have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

The Company 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, the Company agrees to conduct data Collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. 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 the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

7.2.3 Solid Waste Service Records

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for limited services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick ups;
- f) Number of Refuse, Recycling, and Green Waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

7.2.4 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

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 Biennial Audit

Company shall fund biennial audits as described below. 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. The first audit will be based on the Company's reports and records for Fiscal Year 2012 and may be conducted as soon as relevant data, such as tonnage, is available. Audits will be performed every other year thereafter (the biennial audit). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

7.2.7 Payments and Refunds

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

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 efficiency of operations;
- b) Evaluate past and expected progress towards significantly exceeding AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under

penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

Public Works Director (or designated representative)
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.

- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.
- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.

7.3.3 Quarterly Reports

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling programs with Company, and their service levels.

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated

- companies, and of other entities that may perform services under this Agreement, as the City may request.
- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
 - f) Number of routes and route hours per day by type of service.

7.3.5 Financial Report

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing the Company'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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

7.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

7.5 Right to Inspect Records

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, 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) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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 or active negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement. Company’s indemnification of the City is subject to all of the following restrictions:

- a. The Company’s obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et. seq.* of the Public Resources Code.
- b. No payment required under the company’s obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company’s breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company’s breach or non-compliance resulted from City’s action

or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

8.4 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a) The City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
 - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
 - d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. The Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

8.5 Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to

cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the 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, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.7 Performance Bond Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 3.8, will not be substantiated until after the final service date. Therefore, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (18) months after the end of the Term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

8.8 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

8.9 Pavement Damage

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by Company's, or Company's subcontractor's, vehicles or employees. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

9.5 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company 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 Company is entered.
- E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand,

with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company 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.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company 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.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

10.2 Criminal Activity of Company

Should the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Company has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty and any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain. If the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. The City finds, and the Company 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 the City as a result of a breach by the Company of its 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) the services provided under 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 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 Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the 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.

Company Initial Here Z.A. City Initial Here _____

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

1. **Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually:
\$150.00
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five (5) such failures annually: \$ 50.00
- c) For each failure to correct a missed pickup within the timing allotted for correction per Section 4.2.2, and for each additional business day in which the Collection is not made up, which exceeds ten (10) such failures annually:
\$50.00/day
- d) 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: \$150.00

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids closed which exceeds ten (10) such occurrences annually:
\$150.00

- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) such occurrences annually:

\$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually:

\$150.00
- f) For each failure to deliver a Rolloff Box or temporary Bin within 48 hours of a Customer's request:

\$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed:

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:

\$250.00
- c) For each failure to notify City within one (1) hour from the time Company has remedied a complaint forwarded by City.

\$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers:

\$150.00
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company.

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversion Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the diversion requirement per Section 3.8.1, beginning with the first full calendar year 2012, and including any partial calendar year at the end of the term: \$25 per ton

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 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 11.8: \$1,000/day

The 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.

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

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes,

other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Company shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify Public Works Director sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Company shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Company is not excused from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 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.

Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a “reverse 911” contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company 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, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

10.6 Assurance of Performance

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

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

11.2 Compliance with Law

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

11.3 Governing Law

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

11.4 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.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) Company shall pay City its reasonable expenses for attorney's and/or consultant'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 Company 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.
- b) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided;

- 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 Company's operations.

- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the 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 sale of operations conducted by the Company 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 the City with a complete list of 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties 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.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Company shall be responsible for coordinating transfer immediately after Company's final pickups, so as not to disrupt service. Company 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. Company shall provide means of access to the new service provider at least one full Working 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.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that customers neither need to find storage for two sets of containers nor go without a container for an inconvenient length of time.

11.9 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.

11.10 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 that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 The Company's Investigation

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

11.12 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

11.13 Notice

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

If to the City: City Manager
 City of Manhattan Beach
 1400 Highland Avenue

Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

And to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to the Company: Chief Operating Officer
Athens Services
14048 Valley Blvd.
City of Industry, CA 91746

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

11.14 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such

designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

11.15 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of 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 under Section 10 of this Agreement.

11.16 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. If changes to the municipal code of the City made after the execution of this Agreement are in conflict with this Agreement, the terms and conditions set forth in this Agreement shall prevail.

11.17 Privacy

The Company 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 the Company 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 so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.18 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

11.19 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

11.20 Section Deleted

11.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

12.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

12.4 Interpretation

This Agreement, including the exhibits 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.

12.5 Agreement

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

12.6 Severability

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

12.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH

("City")

ATTEST: _____
CITY CLERK

By: _____
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

ATHENS SERVICES
By: 

City Attorney

Name: Ron Arakelian, III

Title: Executive Officer

EXHIBIT 1
COMPANY PROPOSAL

EXHIBIT 2
PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 3
MAXIMUM INITIAL COMPANY COMPENSATION

Residential Monthly Rates (through June 30, 2012)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate				
	Standard Service	Backyard Service Surcharge w/o Food Waste (2)	Standard Service w/food waste	Backyard Service Surcharge with Food Waste (2)	Extra Refuse Cart (with or w/o Food Waste)
96-gallon refuse ⁽¹⁾	\$ 14.18	\$ 5.09	\$ 14.74	\$ 5.37	\$ 8.00
64-gallon refuse ⁽¹⁾	\$ 10.18	\$ 5.09	\$ 10.74	\$ 5.37	\$ 6.00
35-gallon refuse ⁽¹⁾	\$ 6.18	\$ 5.09	\$ 6.74	\$ 5.37	\$ 4.00

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building			
	Standard Service	Backyard Service Surcharge w/o Food Waste (2)	Standard Service w/food waste	Backyard Service Surcharge with Food Waste (2)
2 Dwelling Units	\$ 20.36	\$ 10.18	\$ 21.48	\$ 10.74
3 Dwelling Units	\$ 30.54	\$ 15.28	\$ 32.22	\$ 16.12
4 Dwelling Units	\$ 40.72	\$ 20.37	\$ 42.96	\$ 21.49
5 Dwelling Units	\$ 50.90	\$ 25.46	\$ 53.70	\$ 26.86
6 Dwelling Units	\$ 61.08	\$ 30.55	\$ 64.44	\$ 32.23
7 Dwelling Units	\$ 71.26	\$ 35.64	\$ 75.18	\$ 37.60
8 Dwelling Units	\$ 81.44	\$ 40.73	\$ 85.92	\$ 42.97
9 Dwelling Units	\$ 91.62	\$ 45.83	\$ 96.66	\$ 48.35

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

Note: Additional refuse carts for customers with 2 to 9 units, and additional recycling and green waste carts for all residential cart customers shall be provided at no additional charge.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2012)

Commercial Bin Rates

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 12.33	\$ 24.66	\$ 36.98	\$ 49.31	\$ 61.64	\$ 73.97	\$ 86.30	\$ 3.50
32-Gallon Cart	\$ 12.33	\$ 24.66	\$ 36.98	\$ 49.31	\$ 61.64	\$ 73.97	\$ 86.30	\$ 3.50
64-Gallon Cart	\$ 24.66	\$ 49.32	\$ 73.96	\$ 98.62	\$ 123.28	\$ 147.94	\$ 172.60	\$ 7.00
96-Gallon Cart	\$ 36.99	\$ 73.98	\$ 110.94	\$ 147.93	\$ 184.92	\$ 221.91	\$ 258.90	\$ 10.00
2 Cubic Yard	\$ 52.46	\$ 99.46	\$ 146.46	\$ 193.45	\$ 240.45	\$ 287.42	\$ 334.44	\$ 19.35
3 Cubic Yard	\$ 59.96	\$ 114.08	\$ 168.19	\$ 222.30	\$ 276.41	\$ 330.53	\$ 384.64	\$ 29.00
4 Cubic Yard	\$ 67.46	\$ 128.71	\$ 189.96	\$ 251.20	\$ 312.45	\$ 373.70	\$ 434.94	\$ 38.69
6 Cubic Yard	\$ 82.46	\$ 157.96	\$ 233.46	\$ 308.95	\$ 384.45	\$ 459.95	\$ 535.44	\$ 58.01
2 Cubic Yard Compactor	\$ 78.69	\$ 149.19	\$ 219.68	\$ 290.18	\$ 360.68	\$ 431.18	\$ 501.67	\$ 33.04
3 Cubic Yard Compactor	\$ 89.94	\$ 176.29	\$ 262.63	\$ 348.98	\$ 435.33	\$ 521.67	\$ 608.02	\$ 49.15
4 Cubic Yard Compactor	\$ 101.19	\$ 193.07	\$ 284.93	\$ 376.81	\$ 468.68	\$ 560.55	\$ 652.42	\$ 66.64
6 Cubic Yard Compactor	\$ 123.69	\$ 236.94	\$ 350.18	\$ 463.48	\$ 576.68	\$ 689.93	\$ 803.17	\$ 100.27

Commercial Bin Rates w/Restaurant Food Waste Program

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 13.00	\$ 25.99	\$ 38.98	\$ 51.97	\$ 64.97	\$ 77.96	\$ 90.96	\$ 3.50
32-Gallon Cart	\$ 13.00	\$ 25.99	\$ 38.98	\$ 51.97	\$ 64.97	\$ 77.96	\$ 90.96	\$ 3.50
64-Gallon Cart	\$ 26.00	\$ 51.98	\$ 77.96	\$ 103.94	\$ 129.94	\$ 155.92	\$ 181.92	\$ 7.00
96-Gallon Cart	\$ 39.00	\$ 77.97	\$ 116.94	\$ 155.91	\$ 194.91	\$ 233.88	\$ 272.88	\$ 10.00
2 Cubic Yard	\$ 55.29	\$ 104.83	\$ 154.37	\$ 203.90	\$ 253.43	\$ 302.94	\$ 352.50	\$ 19.35
3 Cubic Yard	\$ 63.20	\$ 120.24	\$ 177.27	\$ 234.30	\$ 291.34	\$ 348.38	\$ 405.41	\$ 29.00
4 Cubic Yard	\$ 71.10	\$ 135.66	\$ 200.22	\$ 264.76	\$ 329.32	\$ 393.88	\$ 458.43	\$ 38.69
6 Cubic Yard	\$ 86.91	\$ 166.49	\$ 246.07	\$ 325.63	\$ 405.21	\$ 484.79	\$ 564.35	\$ 58.01
2 Cubic Yard Compactor	\$ 82.94	\$ 157.25	\$ 231.54	\$ 305.85	\$ 380.16	\$ 454.46	\$ 528.76	\$ 33.04
3 Cubic Yard Compactor	\$ 94.80	\$ 185.81	\$ 276.81	\$ 367.82	\$ 458.84	\$ 549.84	\$ 640.85	\$ 49.15
4 Cubic Yard Compactor	\$ 106.65	\$ 203.50	\$ 300.32	\$ 397.16	\$ 493.99	\$ 590.82	\$ 687.65	\$ 66.64
6 Cubic Yard Compactor	\$ 130.37	\$ 249.73	\$ 369.09	\$ 488.51	\$ 607.82	\$ 727.19	\$ 846.54	\$ 100.27

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2012)

Rolloff Box Rates

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	\$ 145.00 per pull
Compactor Box, Any Size	\$ 165.00 per pull
Rolloff Per Ton Charges	
Refuse Disposal	\$ 42.00 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 19.95 per ton
Additional Container Rental - (for boxes emptied less than 3x/ month)	
Standard Box, Any Size	\$ 27.68 per week
Compactor Box, Any Size	\$ 37.27 per week

Optional C&D Rates

Rate Per Pull, Excluding Disposal	
25-40 cubic yard roll-off box	\$ 165.00 per pull
Low Boy (10 cubic yard) roll-off box	\$ 165.00 per pull
Rolloff Per Ton Charges	
Mixed Loads of C&D Debris	\$ 48.00 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
Temporary Bin Service	
First Dump, including delivery and disposal	\$ 85.00 per dump
Additional dumps, including disposal	\$ 50.00 per dump

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2012)

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 75.65	\$ 85.00	\$ 94.35	\$ 113.50
Each Additional Dump	\$ 33.50	\$ 50.00	\$ 66.50	\$ 100.00
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)

EXHIBIT 4A

EXAMPLE CART & BIN RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices							
Row	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/Column A) -1)		
1	Labor	(1)	107.30	109.15	1.7%		
2	Fuel	(2)	344.0	159.1	-53.8%		
3	Equipment	(3)	118.9	124.3	4.5%		
4	Disposal	(5)	215.0	220.0	2.3%		
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%		
6	All Other	(4)	215.8	219.2	1.6%		
Step Two: Determine components							
Row	Adjustment Factor	Index	D Cost Factor Category Weighted as a % of Component Total (7)	E Percent Change In Index (from Column C)	F Total Weighted Change (Columns D x E)		
7	Labor	(1)	29.0%	1.7%	0.5%		
8	Fuel	(2)	11.0%	-53.8%	-5.9%		
9	Equipment	(3)	5.0%	4.5%	0.2%		
10	Disposal	(5)	44.0%	2.3%	1.0%		
11	Transformation	(6)	4.0%	14.6%	0.6%		
12	All Other	(4)	7.0%	1.6%	0.1%		
13	Total		100.0%		-3.5%		
Step Three: Apply percentage change to rates							
Row	Rate Category		G Current Contractor Rate (8)	H Total Weighted Percent Change (from Column F)	I Rate Increase or Decrease (Column G x Column H)	J Adjusted Rate (Column G + Column I)	
14	64-gallon Cart Service		\$ 10.18	-3.5%	\$ (0.36)	\$ 9.82	
15	2 unit Service		\$ 30.36	-3.5%	\$ (1.06)	\$ 29.30	
16	1 unit backyard surcharge		\$ 5.09	-3.5%	\$ (0.18)	\$ 4.91	
17	2 unit backyard surcharge		\$ 10.18	-3.5%	\$ (0.36)	\$ 9.82	
18	Extra bulky item		\$ 21.60	-3.5%	\$ (0.76)	\$ 20.84	
19	Special Pickup/Cart Ov.		\$ 5.00	-3.5%	\$ (0.18)	\$ 4.82	
20	Commercial Can		\$ 12.33	-3.5%	\$ (0.43)	\$ 11.90	
21	3 yd bin, 1x week		\$ 59.96	-3.5%	\$ (2.10)	\$ 57.86	
22	3 yd comp., 1x week		\$ 89.94	-3.5%	\$ (3.15)	\$ 86.79	
23	3 yd bin, extra pickup		\$ 29.00	-3.5%	\$ (1.02)	\$ 27.98	
Step Four: Re-weight cost components							
Row	Adjustment Factor	Index	K Cost Component (Column D)	L Percent Change In Index (Column E)	M Change in Cost Component Weightings (Column K x Column L)	N Adjusted Cost Component Weightings (Column K + Column M)	O Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	29.0%	1.7%	0.5%	29.5%	30.6%
25	Fuel	(2)	11.0%	-53.8%	-5.9%	5.1%	5.3%
27	Equipment	(3)	5.0%	4.5%	0.2%	5.2%	5.4%
28	Disposal	(5)	44.0%	2.3%	1.0%	45.0%	46.6%
29	Transformation	(6)	4.0%	14.6%	0.6%	4.6%	4.8%
30	All Other	(4)	7.0%	1.6%	0.1%	7.1%	7.3%
31	Total		100.0%			96.5%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.
 (2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*
 (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.*
 (4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*
 (5) Consumer Price Index for All Urban Consumers (CUURA421SA0 0000SA0L1E), all items, Los Angeles-Riverside-Orange County - average annual change, capped at 5%.*
 (6) Gate rate at Commerce Waste-to-Energy facility.
 (7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.
 (8) Example rates listed. Adjustment applies to all applicable rate categories.

* See Exhibit 4C.

EXHIBIT 4B

EXAMPLE ROLL-OFF BOX 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	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/Ton	(5)	215.0	220.0	2.3%

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 (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	69.0%	1.7%	1.2%
9	Fuel	(2)	20.0%	-53.8%	-10.8%
10	Equipment	(3)	0.0%	4.5%	0.0%
11	All Other	(4)	11.0%	1.6%	0.2%
12	Service Component Total		100.0%	n/a	-9.4%
13	Refuse/Ton	(5)	100.0%	2.3%	2.3%

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 H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll off Box Pull Rate	\$ 145.00	-9.4%	\$ (13.63)	\$ 131.37
15	Compactor Roll off Box Pull Rate	\$ 165.00	-9.4%	\$ (15.51)	\$ 149.49
16	Refuse/Ton	(5) \$ 42.00	2.3%	\$ 0.97	\$ 42.97

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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	69.0%	1.7%	1.2%	70.2%	77.5%
18	Fuel	(2)	20.0%	-53.8%	-10.8%	9.2%	10.2%
19	Equipment	(3)	0.0%	4.5%	0.0%	0.0%	0.0%
20	All Other	(4)	11.0%	1.6%	0.2%	11.2%	12.3%
21	Total		100.0%			90.6%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.*

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

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

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*

(5) Consumer Price Index for All Urban Consumers (CUURA42ISA0 0000SA0L1E), all items, Los Angeles-Riverside-Orange County - average annual change, capped at 5%.*

(6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

* See Exhibit 4C.

EXHIBIT 4C

EXAMPLE CALCULATION FOR

AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal “and “all other” cost components in Column C.

Consumer Price Index - All Urban Consumers, U.S. City Average
All items less food and energy, CUUR0000SAOL1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235

Average Annual Change: **1.7%**

EXHIBIT 5

EXHIBIT DELETED

EXHIBIT 6

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, _____, a _____ corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2010.

a _____ Corporation

SURETY

By: _____

By: _____

(PRINCIPAL)

(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 7

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 the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company 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:

EXHIBIT 8

CITY SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

EXHIBIT 9

OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.38 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.38 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2012.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW; with 48-hours notice, Company will Collect HHW on Customers' scheduled service day. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);

- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and
- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist's paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with a program description, the start date, materials to be collected, and instructions on how to call in for a pickup. Company shall be required to update the City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of the City's "e-book") in public education mailers required under Section 4.3.2.

B. Exclusive Construction and Demolition Debris Collection

City reserves the right to require Company to exclusively Collect all Construction and Demolition Waste generated in the City at rates not to exceed the rates included in Exhibit 3 at any time during the Agreement Term. Company will be required to divert a minimum of 70% of all Construction and Demolition Waste Collected from landfilling under this option. Construction and Demolition Wastes does not apply towards diversion requirements under Section 3.8.1. Such maximum rates shall be adjusted in accordance with Article 6. This does not preclude City from continuing to permit open competition, to select another exclusive hauler for Construction and Demolition Waste, to competitively procure an exclusive Construction and Demolition Waste collector, or to negotiate with Company for Construction and Demolition Waste Collection.

EXHIBIT 10

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

EXHIBIT 11

COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”

DRAFT

FRANCHISE
AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

CROWN DISPOSAL Co., INC.

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

* * *

January 19, 2011

DRAFT

FRANCHISE
AGREEMENT
BETWEEN
CITY OF MANHATTAN BEACH
AND
CROWN DISPOSAL CO., INC.
FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

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Exhibits

- 1 Company’s Proposal
2. Public Education Plan
3. Initial Rates
4. Rate Adjustment Formula
5. Exhibit Deleted
6. Company’s Faithful Performance Bond
7. Notary Certification
8. City Sponsored Special Events
9. Optional Programs
10. City Hazardous Waste Manifest
11. Commitment to Environmental Sustainability

RECITALS

This Franchise Agreement (Agreement) is entered into this ___ day of _____, 2010, by and between the City of Manhattan Beach (City) and Crown Disposal Co., Inc. (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the City seeks to contract with a solid waste hauler to work together to exceed AB 939 goals by implementing sustainable programs and practices to reduce landfill tonnage, increase producer responsibility, reuse, repair and recycling, and educate the community to sustain the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, in response to a Request for Proposals, Company has submitted a proposal to City and City selected Company on the competitive advantages of that proposal over other proposals received by City; and,

WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 5.24 of the Manhattan Beach City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.2 Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Green Waste, to be Collected by Company pursuant to Section 3.6.3.

1.3 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. 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.

1.4 Agreement

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.5 Section Deleted

1.6 Section Deleted

1.7 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

1.8 Bin

"Bin" means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

1.9 Bulky Waste

"Bulky Waste" means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); Electronic Waste (including stereos,

televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.10 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

1.11 Can

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

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 30 and no greater than 101-gallons.

1.13 City

"City" means the City of Manhattan Beach, a 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.

1.14 Collect/Collection

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

1.15 Commercial and Industrial

"Commercial and Industrial" refers to property, or Owners of property, upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.16 Company

"Company" means Crown Disposal Co., Inc., a California corporation and its officers, directors, employees, agents, companies and subcontractors.

1.17 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.18 Complaint

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.19 Composting

"Composting" means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

1.20 Construction and Demolition Waste

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

1.21 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

1.22 CPI

"CPI" means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index - U.S. city average.

1.23 Customer

"Customer" means the Person having the care and control of any Premises in the City receiving Solid Waste Collection service from the Company.

1.24 Disposal

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

1.25 Disposal Site(s)

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

1.26 Electronic Waste or E-Waste

"Electronic Waste" or "E-Waste" means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as "brown goods."

1.27 Environmental Laws

"Environmental Laws" means all federal and State statutes, county, local and the 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 Toxic Substances Control 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.

1.28 Facility

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

1.29 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

1.30 Food Waste

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste programs included in Section 3.2.7, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,
- Tea bags, coffee grounds and filters.

1.31 Green Waste

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

1.32 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.33 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.34 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

1.35 Materials Recovery Facility

“Materials Recovery Facility” means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

1.36 Mixed Waste Processing

“Mixed Waste Processing” means the separation and sorting of recyclables and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

1.37 Multi-Family

"Multi-Family" means pertaining to any Residential Property with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

1.38 Section Deleted

1.39 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.40 Permanent Rolloff Box Service

“Permanent Rolloff Box Service” means the Collection of Solid Waste generated from ongoing operations at a Customer’s place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premise that would otherwise be Collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.41 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, town, city, or special purpose district.

1.42 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.43 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.44 Rate Year

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.45 Recycling

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.46 Recyclable Materials

"Recyclable Materials" means Residential, Commercial or Industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.47 Refuse

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.48 Residential

"Residential" refers to property, or Owners of property, which is used for Residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.49 Rolloff Box

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

1.50 Sand Section

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

1.51 Single-Family

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

1.52 Solid Waste

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.54 State

"State" means the State of California.

1.54 Temporary Service

"Temporary Service" means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a

Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business' ongoing operations is not included.

1.55 Transformation

"Transformation" means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. "Transformation" does not include composting.

1.56 Universal Waste

"Universal Waste" means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

1.57 Zero Waste

"Zero Waste" means a focus on reducing landfill tonnage by reducing consumption, minimizing waste, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired or Recycled back into nature or the marketplace.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

2.3 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

2.4 Effective Date

The effective date of this Agreement shall be _____ ("effective date").

2.5 Term of Agreement

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) **Accuracy of Representations.** Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) **Absence of Litigation.** There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) **Furnishing of Insurance and Bonds.** The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) **Effectiveness of the City Council Action.** The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Proposition 218

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of

Article XIID of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIIC, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

City agrees to meet and confer with Company prior to City's termination of this Agreement under this section to determine whether City and Company can negotiate a reduction in Company Compensation to offset the protested rate increase.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

2.9 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;

- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- e) Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- f) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- g) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold.
- m) Hazardous Waste, medical waste, and radioactive waste, regardless of its source;
and,
- n) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the Company under this Agreement. City may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Green Waste from City landscaping maintenance operations, contract services, "niche" Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

The City may direct the Company 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 that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the 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 of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- 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.

2.10.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted

the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

2.12 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.13 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (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 the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event,

this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.15 Business License

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

The work to be done by the Company 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 the Company 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 the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

3.1.1 Residential Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with new Refuse Carts of 96- 64- or 32-gallons, as requested by Customer as described in Section 3.7.1.1. Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

Residential Refuse Cart Processing – Company shall send all Refuse Collected in Residential Refuse Carts for processing to recover Recyclables.

Backyard Service - Customers may request “Backyard Service” for an additional charge in accordance with the approved rate schedule. Backyard Service means that Company removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer’s designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge whether or not pickup was called in. If pickup was not called in, a notice shall be left for the Customer indicating a Cart overage Collection was made.

Company shall provide a three-month grace period at the start of service in which it will leave notices on Carts when overages are Collected, informing Customers as to this new policy, including how to call for an additional or larger Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse placed out for Collection in the Residential Customer’s own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

Company shall provide Bin service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family, Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located.

Upon request, Company shall provide split three and four cubic yard Bins, which have separate Collection compartments in order to accommodate two waste streams in one Container. Company shall be compensated based upon the level of Refuse services received. For example, a split four yard Bin, with two cubic yards of capacity designated for Refuse and two cubic yards designated for Recyclables will be charged the rate for a two cubic yard Refuse Bin, Collected at the frequency at which the Refuse side is Collected.

Customers that require twice per day Collection shall be charged as though they had twice the number of Containers being Collected once per day.

Customers may lease from Company or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

3.1.3.2 Temporary Bin Services

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3.3 Commercial Cart or Can Service

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

3.1.3.4 Locking Bins

Company may charge for locking bin service in accordance with the approved rate schedule. No additional fees shall be permitted for provision or installation of the lock.

3.1.3.5 Scout Service/Push-Out Service

Company may not charge an additional fee for scout service, whereby a second vehicle is used to position the Container for Collection, or push-out service, whereby the driver must move the Container a significant distance for Collection.

3.1.4 Rolloff Box Service

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 3. Customers may lease from Company or third parties compactor Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff Boxes remains within the scope of this Agreement, unless otherwise excluded per Section 2.9.

3.1.5 On-Call Bulky Waste Pickup

Company shall provide Bulky Waste pickup service to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day.

Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)

- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

3.1.5.1 Single and Multi-Family Customers

Single and Multi-Family Customers, whether Bin, or Cart Customers, are entitled to three Bulky Waste pickups per dwelling unit per year at no additional charge, with additional pickups Billed in accordance with the approved rate schedule in Exhibit 3. Customers may place up to three (3) items out for Collection per pick-up.

3.1.5.2 Commercial Customers

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 3, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

3.1.6 Commercial Container Overflow Procedures

3.1.6.1 Service Level Upgrade

Customers using Bins, Roll-Off Boxes, and Commercial Carts and Cans that regularly produce more Solid Waste 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 Container, Company 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 the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container in a three-month period, Company 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 will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period - Upon the third event of an overflowed Container in a three-month period, Company shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

3.1.6.2 Container Overage Fee

If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide new 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Section 3.7.1.1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene);

plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

3.2.2 Commercial Recycling

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

Commercial Recycling Site Visits - Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers' Premises not currently subscribing to recycling service and meet with the Customer for the purpose of

establishing a Recycling Program. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type.

At the end of the first six (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse service levels including number and size of Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

Company will visit all new Customers added after the start of this Agreement within two weeks of the start of new service. Company will continue to conduct on-site visits to Multi-Family Bin and Commercial Customers throughout the term of the Agreement to implement new and optimize existing Recycling programs for each Customer. A list of new account and ongoing account visits, including all the information required above, shall be provided to the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers - Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for six-gallon Rehrig-Pacific Containers were approximately \$5.40 per Container.

3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City's Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
August 1 st , 2011	\$28,000	July 1 st , 2015	\$32,000
July 1 st , 2012	\$29,000	July 1 st , 2016	\$33,000
July 1 st , 2013	\$30,000	July 1 st , 2017	\$34,000
July 1 st , 2014	\$31,000	July 1 st , 2018*	\$35,000

* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

3.2.4 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent Construction and Demolition Waste that is suitable for Recycling from being taken to the landfill by:

- Following the City's Construction and Demolition Debris Diversion requirements of the Municipal Code;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,

- Contacting contractors on a list provided by the City annually to educate them on Construction and Demolition Waste diversion.

3.2.5 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

3.2.6 Universal Waste

Company shall instruct Customers not to set out universal waste for Collection except through programs included in this Agreement specifically tailored for the Collection of such items, including SHARPS Collection programs, Bulky Waste Collection, or the optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green waste, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

3.2.7 Permanent Food-Waste Program

Company shall implement both Residential and Restaurant on-going Food Waste programs within four months of the start of service under this agreement at no additional cost.

Under the Residential Food Waste program, Company shall educate Residential Cart Customers to place Food Waste in their Green Waste Cart for co-Collection. Company shall either Compost the co-Collected material, or sort Food Waste from co-Collected material for processing in a digester and Compost the remaining material.

Under the Restaurant Food Waste program, Company shall offer a combination of approaches to accommodate Food Waste generating Customers, including source-separated Food Waste Collection in separate Containers, co-Collection with Refuse

and/or Collection using split Bins for space-constrained Customers. Food Waste co- Collected with Refuse from Food Waste generating Customers would be reverse sorted to remove non-compostables, with the remainder sent for composting.

3.3 Green Waste Program

3.3.1 Residential Green Waste Collection

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one new 96-, 64- or 32-gallon Green Waste Cart in accordance with Section 3.7.1.1. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

3.3.2 Rolloff Box Service

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.3 Holiday Tree Collection Program

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree

Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they include ornaments, garlands, and tinsel, and stands.

3.3.4 End Uses for Green Waste

Company shall divert Green Waste materials from Disposal. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by CalRecycle.

3.3.5 Compost Bin Distribution

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill Customer a co-pay amount to be determined by City. The difference between the amount billed to the Customer and the actual cost of the bin to the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the City. City may inform Company as to an annual cap or overall cap on the number of compost bins to be distributed.

Company shall develop a public education flyer for this program and provide it to City for distribution. Company, including a Company-provided instructor, shall conduct three annual, one-hour composting classes, in May, July and October of each year.

3.3.6 Compost Give-a-Way

At no additional charge, Company will provide residents with 300 free 30-pound bags per year of half wood shavings/half compost, or provide up to 100 tons of bulk compost per year for community projects such as community or school gardens, or a combination of the above. Company will deliver bags or bulk material for distribution at City events or for use at schools, gardens, residences or other City locations as requested by City. Delivery times will be mutually agreed upon between Company and City.

3.4 Warning Notice

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be

contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

3.5 Commercial Mixed Waste Processing

Company shall process all Bin Refuse, resulting in recovery of a minimum of 3,549 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not include any business instruction and therefore does not need to be placed in outreach materials.

3.6 City Services

3.6.1 City Facilities Collection

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, parks, street maintenance operations, and Street Litter Containers (see Section 3.6.4 below). Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required.

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly dispose of hazardous waste that is generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 10. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

In the event that quantities increase by more than 20% from Exhibit 10 levels, City and Company shall mutually agree to additional compensation due Company based upon verifiable costs incurred by Company.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

3.6.4 Street and Park Litter Containers

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, all Solid Waste deposited in City's Street and Park Litter Containers as necessary to prevent overflow at no additional cost at all existing locations. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during

the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

3.6.5 City Sponsored and Non-City Sponsored Events

The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. This shall include providing Containers to Collect and Dispose of all Solid Waste, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source-separated Recyclables. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes and liners at Company's cost.

3.6.6 Emergency Collection and Disposal Service

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/ tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

3.6.7 Sharps Collection Program

Company shall provide Sharps containers to requesting Residential Customers, both Single and Multi-Family Cart and Bin Customers. Containers will be delivered to residents' door. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$15.00 per container. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in Exhibit 9, Company may additionally or alternatively arrange for door-to-door Collection of such containers through this program; however, Company shall continue to deliver Sharps containers to residents' door. "Sharps waste" includes, but is not

limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program. This program will be provided at no additional charge to City or Customers beginning the first day of the start of service under this Agreement.

3.7 Containers

3.7.1 Carts

3.7.1.1 Residential Cart Distribution

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, Customers may request one Cart exchange at no charge each year. After one exchange per year, Customers may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

3.7.1.2 Removal of Existing Containers

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts

and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected. Company is responsible for all costs associated with Container collection and Disposal or Recycling. Company may retain any scrap value received from the Recycling of collected Containers.

3.7.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

Carts shall include a minimum of 30% recycled material and be recyclable.

3.7.1.4 Capacity

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

3.7.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

3.7.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

3.7.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color, matching current colors in distribution. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

City may request that Company use granite lid covers at no additional cost. Otherwise, Cart and Cart lids will be the same color.

3.7.1.8 Cart Labeling

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. The City's logo and, if requested by City, the City website shall appear on the Carts. Company's name and phone number shall be included on a label on the Cart lid (Company's name or logo shall not be visible on the side of the Cart).

3.7.1.9 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Carts. Company shall not hot stamp Company name on Carts.

TRASH, RECYCLING or **GREENWASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English, with graphics and instructions for proper disposal of HHW, and shall place labels on top of all Carts delivered to Customers.

3.7.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

3.7.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70

3.7.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

3.7.2.4 Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

3.7.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

3.7.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

3.7.3 Can Design and Performance Requirements

The Cans shall be manufactured by injection or rotational molding and meet the Can design and performance requirements as specified below. All Cans selected shall be subject to City approval.

3.7.3.1 Capacity

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

3.7.3.2 Can Handles

The Can handles will provide comfortable gripping area for carrying the Can.

3.7.3.3 Can Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

3.7.3.4 Can Colors

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet

degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

3.7.3.5 Identification Markings

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

3.7.3.6 Can Load Capacity

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

3.7.3.7 Can Durability

Cans shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,

- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.3.8 Chemical Resistant

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

3.7.3.9 Reparability or Replacement

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

3.7.4 Cart and Can Ownership and Maintenance Responsibilities

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

3.7.5 Bins and Compactors

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or

replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Company shall remove graffiti at no additional charge from any Container within twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

3.7.6 Rolloff Boxes

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.8 Diversion Requirements

3.8.1 Hauler Diversion Requirements

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation is 70% of the waste Collected by Company under this Agreement during each year of this Agreement; diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to CalRecycle). Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants the City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

3.8.2 City-wide Diversion Rate

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the City under this section that are not otherwise required to be implemented under this Agreement will be implemented in accordance with Section 2.10, under which Company may be entitled to an adjustment in compensation.

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 P.M and 7:30 A.M. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. Company shall adjust the early morning start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven day per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven day per week customers.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this

Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

3.9.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. Company will use Collection vehicles model year 2010 or newer. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) years old. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG) at the start of service under this Agreement. Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the Company in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-Off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three

inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its 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) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) The Company 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. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by

signature of a maintenance supervisor that the repair has been properly performed.

- 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.
- 4) Company shall equip all route vehicles with a GPS tracking system and enable the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

F. City Inspection Per Code. The 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 applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, 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 Manager, which decision shall be final.

3.9.3 Litter Abatement

A. Minimization of Spills. The Company 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 are spilled during Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company 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 the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

3.9.4 Personnel

The Company 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company'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.

The Company 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. The Company 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company 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.

3.9.5 Identification Required

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

3.9.6 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

3.9.8 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

3.9.10 Hiring of Displaced Workers

Company will interview all interested displaced Solid Waste employees that previously worked in the City for prior Solid Waste contractor, and will make offers of employment to all employees meeting Company standards.

3.10 Transportation, Disposal and Processing

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Sites shall be the Puente Hills Landfill, Sunshine Canyon Landfill and Chiquita Canyon Landfill, and the approved waste-to-energy facility shall be the Commerce Refuse-to-Energy Facility (primary) or the Southeast Resource Recovery Facility (back-up). The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery

Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. In the event that City selects a Disposal Site or other Facility, the City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a change in tip fee or transportation costs.

If City directs Company to a facility other than a Solid Waste Facility selected or owned by Company, and use of this Facility adversely affects the ability of the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the City and Company shall meet and confer and mutually agree on revised obligations under Sections 3.8 and 8.3

3.11 Status of Disposal Site

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

3.12 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 Manhattan Beach Solid Waste. Company may request permission from the City for an exception on a case-by-case basis.

3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in the City. The annual route audit information shall include, at 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);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Whether each individual address is Commercial or Multi-Family;
- Number of Residential Dwelling units at each Multi-Family account;
- Service Level per Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted to the Public Works Director and one to the City's billing manager. This summary shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total (Residential Cart, Multi-Family Bin, and Commercial);
- Types of billing and service exceptions observed;
- Number of billing and service exceptions by type;
- Total monthly billing, pre-audit;

- Total monthly billing, post-audit (subsequent to corrections of identified exceptions; and,
- Percentage of billing and service exceptions:
 - Percentage of the number of accounts with errors to the total number of accounts served;
 - Percentage of the “net” change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
 - Percentage of the “absolute” change in net monthly billing as a result of the audit to the total “pre-audit” monthly billing.

The report shall include a description of the procedures followed to complete the annual 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. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company’s plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

3.14 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made, through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company 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. The Company 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 the City. In addition to other required notifications, if the Company observes any substances that 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, the Company will immediately notify the Public Works Director or the Public Works Director's designee.

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

3.15 Hazardous Waste Management Component

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

3.16 Facility Capacity Guarantee

Company guarantees capacity for all Solid Waste to be Collected under this Agreement for the Agreement term at its sister company Community Recycling and Resource Recovery's ("CRRR") Sun Valley transfer station, MRF, organics Facility, C&D Facility and Lamont composting Facility Facilities for the term of this Agreement. CRRR and Company have the same owner and Company has a processing agreement with CRRR.

ARTICLE 4
OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services in subsections A and B below.

A. Compost Bin Co-Pay. The Residential Customers' co-pay for compost bins shall be billed by the Company.

B. Rolloff Box and Temporary Bin Services. In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

4.1.2 City Billing

City shall perform all billing under this contract, other than Rolloff Box service, temporary Bin service, and compost bin co-pays. City reserves the right to direct Company at any time during the Agreement Term to charge Customers for periodic charges such as Bulky Waste pickups, Cart overage pickups, and Bin Container Overage Fees.

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of the City billing Customers. Payment will be based on City's records of services rendered and will be

subject to subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see 4.1.4 below).

4.1.4 Company Responsible for Service Level Accuracy

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt. Failure to notify the City in writing within 45 days shall confirm the Company's approval and acceptance of the payment amount.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

4.1.5 Review of Billings

The Company shall review Billings to customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.6 Suspension of Service Due to Non-Payment

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time

periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.7 Late Fees

Company may assess interest at a rate of 1.5% per month on outstanding balances for services Billed by Company beginning 60 days after invoice is sent. Company may charge insufficient funds fees of no more than \$35.00 per returned check. This section is not applicable to City-billed services, as City pays Company based upon Billings, not receipts.

4.1.8 Franchise Fee

A. Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes Billing of permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

B. Time and Method of Payment

Company shall remit the Franchise Fee payments on or before the thirtieth (30th) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30th) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs),

and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

4.2 Customer Service

4.2.1 Office Hours

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and number of representatives shall be adequate to handle the volume of calls typically experienced on the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

4.2.3 Complaint Documentation

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

4.2.4 Resolution of Customer Complaints

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

4.2.5 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints and assist with waste reduction programs. City shall have the right to approve the Company's choice for a liaison.

Government Liaison shall be the community relations liaison for Manhattan Beach business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his\her physical presence when

requested or appropriate at schools, businesses and business organizations, community events, Environmental Task Force meetings, City Council meetings and workshops, et al.

4.2.6 Service Liaison

Company shall designate in writing a field supervisor (i.e. route manager) as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints, and strategize with City on an on-going basis regarding more efficient Collection practices. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

4.2.7 Customer Service Liaison

Company shall designate a customer service representative to which the City can direct customers that contact the City with Solid Waste service questions. Customer Service Liaison will take responsibility for completing and closing out work orders within the City's designated work order system.

4.2.8 School Outreach Liaison

Company shall designate a School Outreach Liaison to oversee and coordinate all waste reduction activities under Section 4.3.8 below.

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Zero Waste Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to significantly exceed AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods

acceptable to the City. Any outreach material utilizing paper, provided and distributed by the Company, shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall assist the City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to the City. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

- **Initial Cart Selection Mailing** - Company shall prepare and distribute the mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** - At least 30 days prior to August 1, 2011, Company will prepare and mail, using City-provided labels, an initial mailing to Residential and Commercial Customers explaining the transition from the existing programs to the new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information. For Residential Cart Customers, this mailing will be in addition to the initial mailing requesting Cart Customers to select Cart sizes and numbers.
- **Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an "e-book" or "e-magazine" format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.

- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract is in effect, using City-provided mailing labels.
- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City's request and with City's review and approval of the materials. Notices will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.
- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners' associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the Company shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material.

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Zero Waste Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Zero Waste programs.

4.3.5 Use of "Manhattan Beach Recycles" Program Name

The program name "Manhattan Beach Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. City confers a revocable license to Company to use "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

Company shall provide in-unit Recycling Containers to each Multi-Family Bin Customer Dwelling Unit upon request of individual Dwelling Unit, property owner or manager. In-unit Containers shall be hot stamped or labeled with items that may be placed in the Recycling Container, and shall not carry Company logo and shall become the property of the City upon distribution. City logo may be used. Company will provide all property managers and Residents with Bin service with Recycling program guidelines, posters to be placed in laundry rooms, refuse/recyclable container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin Customer service. Company shall contact each Multi-Family Customer building owner or property manager by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the recyclables containers.

Company shall prepare and mail a brochure with recycled content and labeled "Made from Recycled Paper" at least once per year to each Multi-Family Dwelling unit that does not individually receive semi-annual and quarterly notices under Section 4.3.2; brochure shall describe all Solid Waste programs and holiday schedules as they apply to Multi-Family Cart Customers and to Residential Bin Customers.

Company commits a minimum of 865 hours of Company staff, or third-party contractor, time the first year, and 220 each subsequent year, towards meeting Multi-Family outreach efforts as described in this section.

4.3.7 Commercial Outreach Recognition Program

Company commits a minimum of 300 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

Green Business Certification Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with an award to be mutually agreed upon by City and Company.

Zero Waste Green Works – Promoting Recycling at the Work Place

Company will provide businesses with recycled-content prizes such as reusable water bottles, reusable grocery bags, and/or other incentives for managers to provide to employees who contribute to the business’ Zero Waste green program.

Company will provide business managers with promotional information, flyers and instructional posters made from recycled paper and labeled “Made from Recycled Paper” to implement a comprehensive waste reduction and recycling program, including information on what cannot be placed in the recycling container (i.e.: HHW).

Company shall provide initial and on-going consultation and support to businesses who request it to ensure long term success of their business' waste reduction and recycling program.

4.3.8 School Zero Waste Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District and private schools, to promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative recycling containers to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;
- Conduct a minimum of one assembly promoting recycling at each school in the City each year;
- Education and training on proper recycling and waste reduction techniques to students and teachers and web-based resources for the district and schools' websites;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program and participate in school assemblies or City Council meetings for award;
- Free compost for school district gardens (see Section 3.3.6);
- Proper signage for all school sites;

- Provide teachers with sample lesson plans and activity sheets made from recycled paper and labeled "Made from Recycled Paper" on relevant topics on an as requested basis; and,
- Contact each school at least once per semester to offer all services included in this section. City or school may request that more frequent contacts be made. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at schools, Company shall make an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management, janitorial staff, faculty and student volunteers to ensure that improved recycling and waste reduction techniques have been implemented.

Company commits a minimum of 270 hours of Company staff, or third-party contractor, time per year towards meeting School outreach efforts as described in this section. Time allocated to contacting schools to offer programs shall not be counted towards minimum.

4.3.9 Recycling Facility Tours

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

4.3.10 Take-Back Programs

Company will work with local businesses through the Chamber of Commerce to identify take-back and Recycling opportunities.

4.3.11 Construction Waste Disposal Assistance

Company provides assistance with LEED project requirements for contractors requesting Construction and Demolition Waste services.

4.4 Waste Generation/Characterization Studies

Annually, Company will perform a waste stream analysis to identify all components of the Residential and Commercial waste streams in order to help direct education and outreach efforts to increase participation in all Recycling programs.

Additionally, Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Company 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 (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Company 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, as City may request assistance above and beyond that provided by Company annually.

ARTICLE 5

COMPANY COMPENSATION AND RATES

5.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

5.2 Initial Rates

The Company Compensation from the start of service under this Agreement through June 30, 2013 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2013, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline. If any rates would decline based upon Section 5.4 calculations and a rate decrease is not implemented, the subsequent rate adjustment shall be based upon the average changes in indices since previous rate adjustment instead of the average change over the prior year.

The rate adjustments shall apply to the Company Compensation rates included in Exhibit 3. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

5.4 Method of Adjustments

5.4.1 General

For Rate Years beginning July 1, 2013, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

5.4.2 Cost Components for Rate Adjustment Indices

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

Cost Category	Initial Weightings		Rate Adjustment Factor (1)
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	26%	38%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	5%	21%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	26%	7%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste/ Organics	12%	N/A	Actual change in average per ton tipping fee paid by Contractor for Contractor's Disposal of tonnage Collected under this Agreement, weighted based upon the number of tons Disposed at each landfill, capped at the dollar change in the Disposal gate rate per ton at Puente Hills Landfill (Puente Hills Transfer Station, after landfill closure) (2)(3)
Transformation	7%	N/A	Actual change in the per ton gate rate at the Commerce Waste-to-Energy facility
All Other	24%	34%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

(2) Average Disposal Cost Per Ton - For the July 1, 2013 rate adjustment request, the "Old Index" shall be the average gate rate for the period from June 1, 2011 to December 31, 2011.

For subsequent adjustments, the "New Index" under Column B in Example Adjustments in Exhibits 4A and 4B shall be the average gate rate per Disposed ton paid by Company for City residue for the calendar year ended December 31 prior to the rate adjustment request. The "Old Index" under Column A shall be the "New Index" from the prior rate adjustment. Company must submit to the City its disposal tonnage by facility and gate rate for the relevant periods for each rate adjustment request.

(3) Cap On Disposal Increase - In the event that the dollar (not percentage) increase in Company's average tipping fee exceeds that year's dollar increase at the Puente Hills Landfill/MRF, the additional increase in excess of the cap will roll forward to subsequent adjustments only to the extent that the increase does not exceed this dollar increase cap in any year.

5.4.3 Rate Adjustment Steps

Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One – Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 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.

Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

5.5 Extraordinary Adjustments

Company may request an adjustment to maximum rates at reasonable times other than that allowed under Section 5.3 and 5.4 of this Agreement in the event of extraordinary changes in the cost of providing service under this Agreement. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of the rate based on an increase or decrease in a direct per ton surcharge assessed at the disposal site or transfer station by Federal, State or local regulatory agencies after the effective date of this Agreement, to the extent the percentage change in these adjustments exceed the cumulative percentage change in the Disposal component adjustments granted under Section 5.3.

For each request for an adjustment to the maximum rates that Company may charge Customers brought pursuant to this section, Company 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 Company in preparing the estimate. Company 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 Company's annual financial statements in connection with the City's review of Company's rate adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

City shall review Company's request and, in City's sole judgment and absolute 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 Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.
- c) Results of the most recent route audit as described in Section 3.13.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results,

feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

6.2 Performance Satisfaction Survey

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1. City shall notify Company of its desire for such a survey at least 90 days in advance of the Solid Waste Services and Performance Review Meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Company. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Company to send out separate Single Family and Multiple-Family/Commercial surveys. Company shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may choose to write or re-write the survey. City may require that Company have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

The Company 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, the Company agrees to conduct data Collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. 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 the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

7.2.3 Solid Waste Service Records

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for limited services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick ups;
- f) Number of Refuse, Recycling, and Green Waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

7.2.4 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

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 Biennial Audit

Company shall fund biennial audits as described below. 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. The first audit will be based on the Company's reports and records for Fiscal Year 2012 and may be conducted as soon as relevant data, such as tonnage, is available. Audits will be performed every other year thereafter (the biennial audit). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

7.2.7 Payments and Refunds

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

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 efficiency of operations;
- b) Evaluate past and expected progress towards significantly exceeding AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under

penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

Public Works Director (or designated representative)
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.

- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.
- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.

7.3.3 Quarterly Reports

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling programs with Company, and their service levels.

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated

companies, and of other entities that may perform services under this Agreement, as the City may request.

- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
- f) Number of routes and route hours per day by type of service.

7.3.5 Financial Report

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing the Company'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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

7.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

7.5 Right to Inspect Records

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, 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) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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 or active negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement. Company's indemnification of the City is subject to all of the following restrictions:

- a. The Company's obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et seq.* of the Public Resources Code.
- b. No payment required under the company's obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company's breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company's breach or non-compliance resulted from City's action

or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

8.4 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

- a) The City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
- b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
- c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
- d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. The Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

8.5 Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to

cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the 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, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.7 Performance Bond Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 3.8, will not be substantiated until after the final service date. Therefore, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (18) months after the end of the Term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

8.8 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

8.9 Pavement Damage

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by Company's, or Company's subcontractor's, vehicles or employees. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

9.5 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company 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 Company is entered.
- E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand,

with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company 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.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company 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.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

10.2 Criminal Activity of Company

Should the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Company has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty and any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain. If the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. The City finds, and the Company 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 the City as a result of a breach by the Company of its 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) the services provided under 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 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 Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the 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

- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) such occurrences annually:

\$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually:

\$150.00
- f) For each failure to deliver a Rolloff Box or temporary Bin within 48 hours of a Customer's request:

\$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed:

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:

\$250.00
- c) For each failure to notify City within one (1) hour from the time Company has remedied a complaint forwarded by City.

\$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers:

\$150.00
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company.

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversification Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the 70% diversion requirement per Section 3.8.1, beginning with the first full calendar year 2012, and including any partial calendar year at the end of the term: \$25 per ton

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 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 11.8: \$1,000/day

The 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.

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

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes,

other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Company shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify Public Works Director sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Company shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Company is not excused from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 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.

Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a "reverse 911" contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company 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, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

10.6 Assurance of Performance

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

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

11.2 Compliance with Law

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

11.3 Governing Law

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

11.4 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.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) Company shall pay City its reasonable expenses for attorney's and/or consultant'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 Company 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.
- b) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided;

- 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 Company's operations.
- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the 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 sale of operations conducted by the Company 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 the City with a complete list of 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties 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.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Company shall be responsible for coordinating transfer immediately after Company's final pickups, so as not to disrupt service. Company 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. Company shall provide means of access to the new service provider at least one full Working 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.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that customers neither need to find storage for two sets of containers nor go without a container for an inconvenient length of time.

11.9 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.

11.10 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 that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 The Company's Investigation

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

11.12 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

11.13 Notice

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

If to the City: City Manager
 City of Manhattan Beach
 1400 Highland Avenue

Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

And to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to the Company: General Manager
Crown Disposal Co., Inc.
9189 De Garmo Ave.
Sun Valley, CA 91352

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

11.14 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such

designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

11.15 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of 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 under Section 10 of this Agreement.

11.16 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. If changes to the municipal code of the City made after the execution of this Agreement are in conflict with this Agreement, the terms and conditions set forth in this Agreement shall prevail.

11.17 Privacy

The Company 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 the Company 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 so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.18 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

11.19 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

11.20 Section Deleted

11.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

12.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

12.4 Interpretation

This Agreement, including the exhibits 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.

12.5 Agreement

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

12.6 Severability

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

12.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH

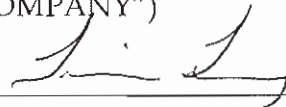
("City")

ATTEST: _____
CITY CLERK

By: _____
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

CROWN DISPOSAL COMPANY, INC.
("COMPANY")

By:  _____

City Attorney

Name: Timothy Fry
Title: General Manager

EXHIBIT 1
COMPANY PROPOSAL

EXHIBIT 2
PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 3
MAXIMUM INITIAL COMPANY COMPENSATION

Residential Monthly Rates (through June 30, 2013)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate		
	Standard Service	Extra Refuse Cart	Backyard Service Surcharge (2)
96-gallon refuse ⁽¹⁾	\$ 14.55	\$ 8.00	\$ 6.00
64-gallon refuse ⁽¹⁾	\$ 10.55	\$ 6.00	\$ 6.00
35-gallon refuse ⁽¹⁾	\$ 6.55	\$ 4.00	\$ 6.00

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building	
	Standard Service	Backyard Service Surcharge (2)
2 Dwelling Units	\$ 21.10	\$ 12.00
3 Dwelling Units	\$ 31.65	\$ 18.00
4 Dwelling Units	\$ 42.20	\$ 24.00
5 Dwelling Units	\$ 52.75	\$ 30.00
6 Dwelling Units	\$ 63.30	\$ 36.00
7 Dwelling Units	\$ 73.85	\$ 42.00
8 Dwelling Units	\$ 84.40	\$ 48.00
9 Dwelling Units	\$ 94.95	\$ 54.00

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

Note: Additional refuse carts for customers with 2 to 9 units, and additional recycling and green waste carts for all residential cart customers shall be provided at no additional charge.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2013)
Commercial Bin Rates

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 20.00	\$ 38.00	\$ 56.00	\$ 74.00	\$ 92.00	\$ 110.00	\$ 128.00	\$ 3.50
32-Gallon Cart	\$ 20.00	\$ 38.00	\$ 56.00	\$ 74.00	\$ 92.00	\$ 110.00	\$ 128.00	\$ 3.50
64-Gallon Cart	\$ 40.00	\$ 76.00	\$ 112.00	\$ 148.00	\$ 184.00	\$ 220.00	\$ 256.00	\$ 7.00
96-Gallon Cart	\$ 60.00	\$ 114.00	\$ 168.00	\$ 222.00	\$ 276.00	\$ 330.00	\$ 384.00	\$ 10.00
2 Cubic Yard	\$ 72.00	\$ 105.11	\$ 145.00	\$ 185.17	\$ 220.19	\$ 290.26	\$ 350.30	\$ 19.35
3 Cubic Yard	\$ 90.01	\$ 133.34	\$ 187.78	\$ 222.22	\$ 266.65	\$ 355.53	\$ 444.42	\$ 29.00
4 Cubic Yard	\$ 107.84	\$ 161.75	\$ 215.67	\$ 269.59	\$ 323.51	\$ 431.35	\$ 539.19	\$ 38.69
6 Cubic Yard	\$ 136.63	\$ 207.94	\$ 277.27	\$ 346.59	\$ 415.92	\$ 554.56	\$ 693.18	\$ 58.01
2 Cubic Yard Compactor	\$ 119.65	\$ 179.40	\$ 239.19	\$ 302.17	\$ 358.81	\$ 478.45	\$ 598.19	\$ 33.04
3 Cubic Yard Compactor	\$ 152.57	\$ 228.86	\$ 307.28	\$ 381.40	\$ 457.58	\$ 610.13	\$ 762.69	\$ 49.15
4 Cubic Yard Compactor	\$ 185.72	\$ 278.53	\$ 371.39	\$ 464.18	\$ 557.09	\$ 742.74	\$ 928.55	\$ 66.64
6 Cubic Yard Compactor	\$ 239.62	\$ 359.42	\$ 479.25	\$ 599.03	\$ 718.83	\$ 958.45	\$ 1,198.07	\$ 100.27
3 Cubic Yard Split Bin (1)	\$ 68.00	\$ 95.11	\$ 135.00	\$ 175.17	\$ 210.19	\$ 280.26	\$ 340.30	\$ 19.35
4 Cubic Yard Split Bin (1)	\$ 72.00	\$ 105.11	\$ 145.00	\$ 185.17	\$ 220.19	\$ 290.26	\$ 350.30	\$ 29.00

(1) Assumes half of capacity is for refuse and half for recyclable material.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2013)

Rolloff Box Rates

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	\$ 140.00 per pull
Compactor Box, Any Size	\$ 178.00 per pull
Rolloff Per Ton Charges	
Refuse Disposal	\$ 39.75 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 36.00 per ton
Additional Container Rental - (for boxes emptied less than 3x/ month)	
Standard Box, Any Size	\$ - per week
Compactor Box, Any Size	\$ 25.00 per week

Optional C&D Rates

Rate Per Pull, Excluding Disposal	
25-40 cubic yard roll-off box	\$ 140.00 per pull
Low Boy (10 cubic yard) roll-off box	\$ 140.00 per pull
Rolloff Per Ton Charges	
Mixed Loads of C&D Debris	\$ 39.75 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
Temporary Bin Service	
First Dump, including delivery and disposal	\$ 75.00 per dump
Additional dumps, including disposal	\$ 75.00 per dump

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2013)
Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 66.75	\$ 75.00	\$ 83.25	\$ 99.75
Each Additional Dump	\$ 50.25	\$ 75.00	\$ 99.75	\$ 150.00
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)

EXHIBIT 4A

EXAMPLE CART & 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)	107.30	109.15	1.7%
2	Fuel	(2)	344.0	159.1	-53.8%
3	Equipment	(3)	118.9	124.3	4.5%
4	Disposal	(5)	\$ 28.00	\$ 30.00	7.1%
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%
6	All Other	(4)	215.8	219.2	1.6%

Step Two: Determine components

Row	Adjustment Factor	Index	D	E	F
			Cost Factor Category Weighted as a % of Component Total (7)	Percent Change In Index (from Column C)	Total Weighted Change (Columns D x E)
7	Labor	(1)	26.0%	1.7%	0.4%
8	Fuel	(2)	5.0%	-53.8%	-2.7%
9	Equipment	(3)	26.0%	4.5%	1.2%
10	Disposal	(5)	12.0%	7.1%	0.9%
11	Transformation	(6)	7.0%	14.6%	1.0%
12	All Other	(4)	24.0%	1.6%	0.4%
13	Total		100.0%		1.2%

Step Three: Apply percentage change to rates

Row	Rate Category	Current Contractor Rate (8)	G	H	I	J
			Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)		
14	64-gallon Cart Service	\$ 10.56	1.2%	\$ 0.13	\$ 10.69	
15	2 unit Service	\$ 21.10	1.2%	\$ 0.25	\$ 21.35	
16	1 unit backyard surcharge	\$ 12.00	1.2%	\$ 0.14	\$ 12.14	
17	2 unit backyard surcharge	\$ 18.00	1.2%	\$ 0.22	\$ 18.22	
18	Extra bulky item	\$ 21.60	1.2%	\$ 0.26	\$ 21.86	
19	Special Pickup/Cart Ov.	\$ 5.00	1.2%	\$ 0.06	\$ 5.06	
20	Commercial Can	\$ 20.00	1.2%	\$ 0.24	\$ 20.24	
21	3yd bin, 1x week	\$ 90.01	1.2%	\$ 1.08	\$ 91.09	
22	3yd comp., 1x week	\$ 152.57	1.2%	\$ 1.83	\$ 154.40	
23	3yd bin, extra pickup	\$ 29.00	1.2%	\$ 0.35	\$ 29.35	

Step Four: Re-weight 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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	26.0%	1.7%	0.4%	26.4%	26.1%
25	Fuel	(2)	5.0%	-53.8%	-2.7%	2.3%	2.3%
27	Equipment	(3)	26.0%	4.5%	1.2%	27.2%	26.9%
28	Disposal	(5)	12.0%	7.1%	0.9%	12.9%	12.7%
29	Transformation	(6)	7.0%	14.6%	1.0%	8.0%	7.9%
30	All Other	(4)	24.0%	1.6%	0.4%	24.4%	24.1%
31	Total		100.0%			101.2%	100.0%

(1) Employment Cost Index, CIU201000032000001, Total compensation, Private industry, Index number, Transportation and material moving.

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

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

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*

(5) Average actual change per ton in disposal costs to contractor, capped at no more than the dollar change in per ton disposal gate rate at the Puente Hills Landfill/MRF.

(6) Gate rate at Commerce Waste-to Energy Facility.

(7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

(8) Example rates listed. Adjustment applies to all applicable rate categories.

* See Exhibit 4C

EXHIBIT 4B

EXAMPLE ROLL-OFF BOX 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	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/ Ton	(5)	\$ 28.00	\$ 30.00	7.1%

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 (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	38.0%	1.7%	0.6%
9	Fuel	(2)	21.0%	-53.8%	-11.3%
10	Equipment	(3)	7.0%	4.5%	0.3%
11	All Other	(4)	34.0%	1.6%	0.5%
12	Service Component Total		100.0%	n/a	-9.9%
13	Refuse/ Ton	(5)	100.0%	7.1%	7.1%

Step Three: Apply percentage change to rates

Row	Rate Category	Index	G	H	I	J
			Current Customer Rate	Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll-off Box Pull Rate		\$ 140.00	-9.9%	\$ (13.86)	\$ 126.14
15	Compactor Roll-off Box Pull Rate		\$ 178.00	-9.9%	\$ (17.62)	\$ 160.38
16	Refuse/ Ton	(5)	\$ 39.75	7.1%	\$ 2.82	\$ 42.57

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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	38.0%	1.7%	0.6%	38.6%	42.8%
18	Fuel	(2)	21.0%	-53.8%	-11.3%	9.7%	10.8%
19	Equipment	(3)	7.0%	4.5%	0.3%	7.3%	8.1%
20	All Other	(4)	34.0%	1.6%	0.5%	34.5%	38.3%
21	Total		100.0%			90.1%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.*

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*

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

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*

(5) Average actual change per ton in disposal costs to contractor, capped at no more than the dollar change in per ton disposal gate rate at the Puente Hills Landfill/MRF. (Same percentage as for cart/bin adjustment)

(6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

* See Exhibit 4C.

EXHIBIT 4C
EXAMPLE CALCULATION FOR
AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal” and “all other” cost components in Column C.

Consumer Price Index - All Urban Consumers, U.S. City Average
All items less food and energy, CUUR0000SAOL1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235

Average Annual Change: 1.7%

EXHIBIT 5
EXHIBIT DELETED

EXHIBIT 6

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, _____, a _____ corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2010.

a _____ Corporation

SURETY

By: _____

By: _____

(PRINCIPAL)

(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 7

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 the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company 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:

EXHIBIT 8

CITY SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

EXHIBIT 9

OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.55 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.55 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2013.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);

- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and
- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist's paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with a program description, the start date, materials to be collected, and instructions on how to call in for a pickup. Company shall be required to update the City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of the City's "e-book") in public education mailers required under Section 4.3.2.

B. Exclusive Construction and Demolition Debris Collection

City reserves the right to require Company to exclusively Collect all Construction and Demolition Waste generated in the City at rates not to exceed the rates included in Exhibit 3 at any time during the Agreement Term. Company will be required to divert a minimum of 70% of all Construction and Demolition Waste Collected from landfilling under this option.

Construction and Demolition Wastes does not apply towards diversion requirements under Section 3.8.1. Such maximum rates shall be adjusted in accordance with Article 6. This does not preclude City from continuing to permit open competition, to select another exclusive hauler for Construction and Demolition Waste, to competitively procure an exclusive Construction and Demolition Waste collector, or to negotiate with Company for Construction and Demolition Waste Collection.

EXHIBIT 10

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclpentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

EXHIBIT 11

COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”

DRAFT

FRANCHISE

AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

USA WASTE OF CALIFORNIA, INC.

DBA WASTE MANAGEMENT OF LOS ANGELES

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

* * *

January 20, 2011

DRAFT

FRANCHISE
AGREEMENT
BETWEEN
CITY OF MANHATTAN BEACH
AND
USA WASTE OF CALIFORNIA, INC.
DBA WASTE MANAGEMENT OF LOS ANGELES
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RECITALS

This Franchise Agreement (Agreement) is entered into this __ day of _____, 2011, by and between the City of Manhattan Beach (City) and USA Waste of California, Inc. dba Waste Management of Los Angeles (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 40000 et seq.) has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste handling within their jurisdictions to meet the goals and requirements of AB 939; and,

WHEREAS, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the City seeks to contract with a solid waste hauler to work together to exceed AB 939 goals by implementing sustainable programs and practices to reduce landfill tonnage, increase producer responsibility, reuse, repair and recycling, and educate the community to sustain the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the City has determined that the public health, safety, and well-being require that an exclusive Franchise be awarded to a qualified company for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste and other services to meet the goals and requirements of AB 939; and,

WHEREAS, in response to a Request for Proposals, Company has submitted a proposal to City and City selected Company on the competitive advantages of that proposal over other proposals received by City; and,

WHEREAS, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the Company (Parties) hereto desire to enter into this Agreement,

NOW, THEREFORE, in consideration of the premises above stated and the terms, conditions, covenants and agreements contained herein, the Parties do hereby agree as follows:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Chapter 5.24 of the Manhattan Beach City Code or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time.

1.2 Abandoned Items

"Abandoned Items" means items abandoned in the public right-of-way, including but not limited to Bulky Waste items and Green Waste, to be Collected by Company pursuant to Section 3.6.3.

1.3 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) that are directly or indirectly related to the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the Company and/or a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in the Company. 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.

1.4 Agreement

"Agreement" means this Franchise Agreement between the City and the Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and other services related to meeting the goals and requirements of AB 939, including all exhibits and attachments, and any amendments thereto.

1.5 Bagster® Bag

"Bagster® Bag" means a soft-sided polypropylene Container that can hold up to 3,000 pounds of Solid Waste, is purchased by the Customer at a local hardware or home supply store, and is Collected by Company using a special vehicle with an overhead crane.

1.6 Bagster® Service

"Bagster® Service" means a method for Residential or Commercial and Industrial Customers to arrange for Collection of Solid Waste as an alternative to temporary Bin or temporary Rolloff Box service, using a Bagster® bag. Company will provide for Collection/processing of the Bagster® bag. Bagster® Service is a Temporary Service. The rate for Bagster® Service shall be a reasonable rate negotiated between the Customer and Company.

1.7 Billings

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the Company, to Persons responsible for arranging for Solid Waste removal.

1.8 Bin

“Bin” means a metal Container with hinged lids and wheels serviced by a front-end loading truck with a capacity of 2 to 6 cubic yards, including Bins with compactors attached to increase the capacity of the Bin.

1.9 Bulky Waste

“Bulky Waste” means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); Electronic Waste (including stereos, televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.10 CalRecycle

“CalRecycle” means the State of California’s Department of Resources Recycling and Recovery, and, as this department was structured prior to January 1, 2010, the California Integrated Waste Management Board or CIWMB.

1.11 Can

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

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 30 and no greater than 101-gallons.

1.13 City

"City" means the City of Manhattan Beach, a 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.

1.14 Collect/Collection

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

1.15 Commercial and Industrial

"Commercial and Industrial" refers to property, or Owners of property, upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

1.16 Company

"Company" means USA Waste of California, Inc. dba Waste Management of Los Angeles, a Delaware corporation and its officers, directors, employees, agents, companies and subcontractors.

1.17 Company Compensation

"Company Compensation" means the revenue received by the Company from Billings in return for providing services in accordance with this Agreement and any amendments to this Agreement.

1.18 Complaint

"Complaint" means a communication received by Company from a Customer or City indicating services have not been performed in accordance with this Agreement, or otherwise expressing dissatisfaction with service.

1.19 Composting

“Composting” means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.5.

1.20 Construction and Demolition Waste

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

1.21 Containers

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

1.22 CPI

“CPI” means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index – U.S. city average.

1.23 Customer

“Customer” means the Person having the care and control of any Premises in the City receiving Solid Waste Collection service from the Company.

1.24 Disposal

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

1.25 Disposal Site(s)

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

1.26 Electronic Waste or E-Waste

“Electronic Waste” or “E-Waste” means electronic equipment and includes, but is not limited to, stereos, televisions, computers and computer monitors, VCRs, cellular

phones, fax machines, household copiers, computer printers, other items with electric plugs that are banned from landfilling, and other similar items commonly known as “brown goods.”

1.27 Environmental Laws

"Environmental Laws" means all federal and State statutes, county, local and the 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 Toxic Substances Control 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.

1.28 Facility

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

1.29 Franchise

"Franchise" means the exclusive right granted by the City to provide Solid Waste services within the City.

1.30 Food Waste

“Food Waste” means Solid Waste that may be Collected as part of the Food Waste pilot programs included in Sections 3.2.7 and 3.2.8, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,

- Tea bags, coffee grounds and filters.

1.31 Green Waste

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

1.32 Hazardous Substance

"Hazardous Substance" means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, State or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

1.33 Hazardous Waste

"Hazardous Waste" means all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code §25110.02, §25115, and §25117 or in the future amendments to or recodifications of such statutes or identified and listed as Hazardous Waste by the US Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.34 Household Hazardous Waste (HHW)

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

1.35 Materials Recovery Facility

"Materials Recovery Facility" means a Facility licensed or permitted in accordance with AB 939 which separates secondary materials, such as paper and other fibers, plastic, mixed glass and metal containers and processes them for sale to end users or use by Company.

1.36 Mixed Waste Processing

"Mixed Waste Processing" means the separation and sorting of recyclables and other recoverable materials from Refuse at a MRF where commingled loads of Solid Waste are processed.

1.37 Multi-Family

"Multi-Family" means pertaining to any Residential Property with two or more units, irrespective of whether residence therein is transient, temporary or permanent.

1.38 Section Deleted

1.39 Owner

"Owner" means the Person holding the legal title to the real property constituting the Premises to which Solid Waste Collection service is to be provided under this Agreement or the Person holding legal title to the Disposal Site, depending upon the context used in this Agreement.

1.40 Permanent Rolloff Box Service

"Permanent Rolloff Box Service" means the Collection of Solid Waste generated from ongoing operations at a Customer's place of business using Rolloff Boxes or large Compactors. This includes, for example, the Collection of Solid Waste from a Commercial Premise that would otherwise be Collected using Bin service if the volume of Solid Waste generated were less. This does not include Rolloff Box service used for

occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

1.41 Person

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Los Angeles, town, city, or special purpose district.

1.42 Premises

"Premises" means any land, or building in the City where Solid Waste is generated or accumulated.

1.43 Putrescible Waste

"Putrescible Waste" means wastes that are capable of being decomposed by micro-organisms with sufficient rapidity as to cause nuisances because of odors, gases, or other offensive conditions.

1.44 Rate Year

"Rate Year" means the twelve-month period from July 1st to June 30th, each year of the Agreement.

1.45 Recycling

"Recycling" means any process by which materials which would otherwise become Solid Waste are Collected (source-separated, co-mingled, or as mixed waste), separated and/or processed and returned to the economic mainstream in the form of raw materials or products or materials which are otherwise salvaged or recovered for reuse.

1.46 Recyclable Materials

"Recyclable Materials" means Residential, Commercial or Industrial source separated by-products of some potential economic value, set aside, handled, packaged, or offered for Collection in a manner different from Refuse.

1.47 Refuse

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

1.48 Residential

"Residential" refers to property, or Owners of property, which is used for Residential purposes including Single-Family and Multi-Family Dwelling Units, irrespective of whether such dwelling units are rental units or are Owner-occupied.

1.49 Rolloff Box

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

1.50 Sand Section

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

1.51 Single-Family

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

1.52 Solid Waste

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.54 State

"State" means the State of California.

1.54 Temporary Service

“Temporary Service” means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business’ ongoing operations is not included.

1.55 Transformation

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting. “Transformation” does not include composting.

1.56 Universal Waste

“Universal Waste” means any of the following waste that are conditionally exempt from classification as hazardous wastes pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

1.57 Zero Waste

“Zero Waste” means a focus on reducing landfill tonnage by reducing consumption, minimizing waste, maximizing reuse, repair, and Recycling, ensuring products are made to be reused, repaired or Recycled back into nature or the marketplace.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, the City hereby grants to the Company a Franchise to Collect, transfer, transport, recycle, process, and dispose of Solid Waste accumulating in the City that is required to be accumulated and offered for Collection to the Company in accordance with this Agreement.

The Company hereby accepts the Franchise on the terms and conditions set forth in this Agreement.

2.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

2.3 Exclusive Nature of Franchise

During the term of this Agreement, except as otherwise provided in Section 2.9, or as may otherwise be provided by federal or State law, the rights granted to the Company under this Agreement shall be exclusive to the Company. The City will not let any contract to, or enter into any agreement with, any other Person for the performance of the services herein required to be performed by the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, or other legal costs related to any such action. Nothing herein shall preclude Company from taking such legal action against third parties, as it deems appropriate to protect the exclusive nature of its Franchise.

2.4 Effective Date

The effective date of this Agreement shall be _____ ("effective date").

2.5 Term of Agreement

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

2.6 Conditions to Effectiveness of Agreement

The obligation of the City to permit this Agreement to become effective and to perform its undertakings provided for in this Agreement is subject to the satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by the City.

- a) Accuracy of Representations. Representations and warranties made by the Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) Effectiveness of the City Council Action. The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

2.7 Proposition 218

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of

Article XIID of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIIC, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty days advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

City agrees to meet and confer with Company prior to City's termination of this Agreement under this section to determine whether City and Company can negotiate a reduction in Company Compensation to offset the protested rate increase.

2.8 Delegation of Authority

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

2.9 Limitations on Scope of Franchise

The Franchise granted to the Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be construed to excuse any Person from obtaining any authorization from the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;

- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- e) Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and employees;
- f) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Customer, and which is transported personally by the Customer off such Premises (or by his or her full-time employees) to a processing or Disposal Facility;
- g) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) Green Waste removed from a Premises by a gardening, landscaping, or tree trimming company utilizing its own equipment and employees as an incidental part of a total service offered by the company rather than as a hauling service;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold;
- m) Collection using Customer-provided Containers for one-time accumulation of material, and removal of Container for Disposal/processing. This exclusion is intended to include programs providing alternative methods of temporary Collection service that exclude the use of Bins, such as Company's Bagster®

program as defined in Sections 1.5 and 1.6. This exclusion is not intended to permit an alternative to permanent Refuse Collection service;

- n) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- o) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the Company under this Agreement. City may enter into agreements with other entities for the solid waste and Recycling services not provided for in this Agreement, including but not limited to, Disposal of street sweeping debris and Green Waste from City landscaping maintenance operations, contract services, “niche” Recycling services, and Hazardous Household Waste pickups.

This grant to the Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that the City shall not be responsible for any lost profits claimed by the Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of the Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

The City may direct the Company 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 that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that the City may direct. The Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

The Company shall present, within 30 days of a request to do so by the 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 of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,
- 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.

2.10.3 City's Right to Acquire Services

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within

ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the Company to provide such services.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if the City exercises such right by providing specific written direction to the Company, the Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by the Company. Subject to the provisions of this Agreement, the Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by the Company. The City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so, however, nothing in this Agreement shall be construed as giving rise to any inference that the City has such ownership or possession unless such written notice has been given to the Company.

2.12 Company Status

The Company represents and warrants that it is duly organized, validly existing and in good standing under all applicable laws. It is duly licensed and qualified to transact business in the State of California and has the power to provide services as required by this Agreement.

2.13 Company Authorization

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the Company (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 the Company have authority to do so. Company shall authorize one employee for the City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of the Company.

2.14 Annexations

This Agreement extends to any territory annexed to the City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services shall be added to the Franchise area covered by this Agreement. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

2.15 Business License

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the City shall be awarded to any vendor until such business license has been obtained, and all fees paid therefore, by the vendor and the subcontractors.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

The work to be done by the Company 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 the Company 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 the Company pursuant to this Agreement shall be accomplished in a thorough and professional manner so that the residents within the City are provided reliable, courteous and high-quality Solid Waste Collection at all times.

3.1.1 Residential Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with Refuse Carts of 96-64- or 32-gallons, as requested by Customer as described in Sections 3.7.1.1 and 3.7.7. Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

Customers may request “Backyard Service” for an additional charge in accordance with the approved rate schedule. Backyard Service means that Company removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer’s designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

Company shall replace all Carts (Refuse, Recycling and Green Waste) with lids closed after emptying them.

3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) pickups to be provided at no charge whether or not pickup was called in. If pickup was not called in, a notice shall be left for the Customer indicating a Cart overage Collection was made.

Company shall provide a three-month grace period at the start of service in which it will leave notices on Carts when overages are Collected, informing Customers as to this new policy, including how to call for an additional or larger Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse placed out for Collection in the Residential Customer’s own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

Company shall provide Bin service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company shall Collect and remove all Refuse that is placed in Bins from Multi-Family, Commercial and Industrial Properties receiving Bin service, at least once every week or more frequently if required to handle the waste stream of the Premises where the Bins are located.

Upon request, Company shall provide split two, three and four cubic yard Bins, which have separate Collection compartments in order to accommodate two waste streams in one Container. Company shall be compensated based upon the level of Refuse services received. For example, a split four yard Bin, with two cubic yards of capacity designated for Refuse and two cubic yards designated for Recyclables will be charged the rate for a two cubic yard Refuse Bin, Collected at the frequency at which the Refuse side is Collected.

Customers that require twice per day Collection shall be charged as though they had twice the number of Containers being Collected once per day.

Customers may lease from Company or third parties compaction equipment that may be attached to Bins. The provision of compaction equipment is outside the scope of this Agreement. Collection of Bins using these devices remains within the scope of this Agreement unless otherwise excluded per Section 2.9.

3.1.3.2 Temporary Bin Services

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company.

Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3.3 Commercial Cart or Can Service

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week.

3.1.3.4 Locking Bins

Company may charge for locking bin service in accordance with the approved rate schedule. No additional fees shall be permitted for provision or installation of the lock.

3.1.3.5 Scout Service/Push-Out Service

Company may not charge an additional fee for scout service, whereby a second vehicle is used to position the Container for Collection, or push-out service, whereby the driver must move the Container a significant distance for Collection.

3.1.4 Rolloff Box Service

Company must provide permanent Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 3. Customers may lease from Company or third parties compactor Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff Boxes remains within the scope of this Agreement, unless otherwise excluded per Section 2.9.

3.1.5 On-Call Bulky Waste Pickup

Company shall provide Bulky Waste pickup service to all Customers. Customers will be instructed in educational materials to provide the Company with forty-eight (48) hours notice, and the items will be Collected on the Customer's regular Collection day.

Bulky Waste Collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:

- a) Reuse as is (if energy efficient)

- b) Disassemble for reuse or Recycling
- c) Recycle
- d) Disposal

This hierarchy precludes the use of front- or rear loading packer vehicles for bulky goods unless the compaction mechanism is not used to compact the Bulky Goods, unless they have been designated for Disposal.

3.1.5.1 Single and Multi-Family Customers

Single and Multi-Family Customers, whether Bin, or Cart Customers, are entitled to three Bulky Waste pickups per dwelling unit per year at no additional charge, with additional pickups Billed in accordance with the approved rate schedule in Exhibit 3. Customers may place up to three (3) items out for Collection per pick-up.

3.1.5.2 Commercial Customers

Company may charge Commercial Bin, Cart, and Can Customers for pickups in accordance with the rate schedule contained in Exhibit 3, based on the number and type of items. Timing and place of pickup shall be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

3.1.6 Commercial Container Overflow Procedures

3.1.6.1 Service Level Upgrade

Customers using Bins, Roll-Off Boxes, and Commercial Carts and Cans that regularly produce more Solid Waste 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 Container, Company 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 the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container in a three-month period, Company 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 will result in an increase in the level of service, and that a Container overage fee may be charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three Month Period – Upon the third event of an overfilled Container in a three-month period, Company shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

3.1.6.2 Container Overage Fee

If Solid Waste was left beside the Container for Collection or Company cleaned up spilled waste from an overflowing container, Company may charge the Container Overage Fee in the approved rate schedule after the third incident in one calendar year, provided Company has sent written warnings for the first two incidents.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Sections 3.7.1.1 and 3.7.7. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene);

plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

3.2.2 Commercial Recycling

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

The Company also agrees to use commercially reasonable efforts to make programs available for all other Recyclable Materials for which it has established markets. The Company shall notify all Customers via a mailed flyer each year of the availability of Recycling Collection programs.

Commercial Recycling Site Visits - Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers' Premises not currently subscribing to recycling service and meet with the Customer for the purpose of

establishing a Recycling Program. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, including the name and address of Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type.

At the end of the first six (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse service levels including number and size of Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

Company will visit all new Customers added after the start of this Agreement within two weeks of the start of new service. Company will continue to conduct on-site visits to Multi-Family Bin and Commercial Customers throughout the term of the Agreement to implement new and optimize existing Recycling programs for each Customer. A list of new account and ongoing account visits, including all the information required above, shall be provided to the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers – Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for four-gallon Rehrig-Pacific Containers with diamond cut-outs were approximately \$5.00 per Container.

3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City's Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
August 1 st , 2011	\$28,000	July 1 st , 2015	\$32,000
July 1 st , 2012	\$29,000	July 1 st , 2016	\$33,000
July 1 st , 2013	\$30,000	July 1 st , 2017	\$34,000
July 1 st , 2014	\$31,000	July 1 st , 2018*	\$35,000

* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

3.2.4 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent Construction and Demolition Waste that is suitable for Recycling from being taken to the landfill by:

- Following the City's Construction and Demolition Debris Diversion requirements of the Municipal Code;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,

- Contacting contractors on a list provided by the City annually to educate them on Construction and Demolition Waste diversion.

3.2.5 Marketing and Sale of Recyclable Materials

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

3.2.6 Universal Waste

Company shall instruct Customers not to set out universal waste for Collection except through programs included in this Agreement specifically tailored for the Collection of such items, including SHARPS Collection programs, Bulky Waste Collection, or the optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green waste, and shall tag and not Collect Universal Waste improperly placed for Collection if identified prior to Collection. In the event that Company Collects improperly set-out Universal Waste, Company is responsible for disposing of it at a properly permitted facility.

3.2.7 Residential Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Residential Cart Customers. Program shall be subject to City approval. Company shall conduct the approved Residential food waste pilot program at no additional cost to City or ratepayers, beginning July 1, 2012 (unless start date is extended by City).

Pilot program shall be conducted for a minimum of six months. Participants shall include one full Residential route for one day each week. Company shall develop, produce and deliver public education materials to all Customers on the participating route. Materials shall be subject to advance City approval.

Company shall collect baseline tonnage data from this route for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.2.8 Commercial Food Waste Diversion Pilot Program

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Commercial Food Waste generating Customers. Program shall be subject to City approval. Company shall implement a Commercial Food Waste pilot program for a minimum of six months beginning July 1, 2012 (unless start date is extended by City) for 10% of Food Waste generating Commercial Customers in the City at no additional cost to either City, participants or rate payers.

Prior to the start of the pilot program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Refuse capacity prior to the start of the pilot. Company collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of food waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Commercial food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

3.3 Green Waste Program

3.3.1 Residential Green Waste Collection

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one 96-, 64- or 32-gallon Green Waste Cart in accordance with Sections 3.7.1.1 and 3.7.7. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

3.3.2 Rolloff Box Service

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.3 Holiday Tree Collection Program

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family Customers. Collection period shall be from the first Collection day after December 25 and ending on the second Saturday in January. The Company shall reasonably cooperate with the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they include ornaments, flocking, garlands, and tinsel, and stands.

3.3.4 End Uses for Green Waste

Company shall divert Green Waste materials from Disposal. The Company must provide end uses for Green Waste that maximize diversion credits for the City according to regulations established by CalRecycle.

3.3.5 Compost Bin Distribution

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill Customer a co-pay amount to be determined by City. The difference between the amount billed to the Customer and the actual cost of the bin to the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the City. City may inform Company as to an annual cap or overall cap on the number of compost bins to be distributed.

Company shall develop a public education flyer for this program and provide it to City for distribution. Company, including a Company-provided instructor, shall conduct five annual, one-hour composting classes, in May, July and October of each year and at two additional times to be determined in coordination with City.

3.4 Warning Notice

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

3.5 Commercial Mixed Waste Processing

Company shall send sufficient tons of Bin Refuse for processing to recover a minimum of 1,365 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

3.6 City Services

3.6.1 City Facilities Collection

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the City at no additional charge, including Bulky Waste items placed for Collection by City. Such Premises include, but are not limited to, offices, parks, street maintenance operations, and Street Litter Containers (see Section 3.6.4 below). Collections shall be scheduled at a time mutually agreed upon by the Company and the City. Company will provide all Containers required.

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly dispose of hazardous waste that is generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 10. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

In the event that quantities increase by more than 20% from Exhibit 10 levels, City and Company shall mutually agree to additional compensation due Company based upon verifiable costs incurred by Company.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification by City at no additional charge.

3.6.4 Street and Park Litter Containers

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, all Solid Waste deposited in City's Street and Park Litter Containers as necessary to prevent overflow at no additional cost at all existing locations. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

3.6.5 City Sponsored and Non-City Sponsored Events

City-Sponsored Events - The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. This shall include providing Containers to Collect and Dispose of all Solid Waste, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source-separated Recyclables. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

Non-City Sponsored Events - Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes at cost. Liners, above the reasonable amount of liners provided to non-City sponsored events for use with the reusable Refuse and Recycling stations as described below, at Company's cost. At no additional cost, Company will assist event venues and planners with planning for Solid Waste and Recycling needs and to maximize diversion for events.

Reusable Refuse and Recycling Stations - Company will provide at no additional cost temporary use of up to 50 reusable Refuse and Recycling stations for events at any one time, to be used at either City or non-City sponsored events. Company may request a reasonable refundable deposit for usage at non-City sponsored events. City will provide a reasonable amount of bags/liners for these stations for non-City sponsored events at no additional cost, with bags/liners above a reasonable amount provided at cost. Bags/liners for stations will be provided for City-sponsored events at no additional cost.

3.6.6 Emergency Collection and Disposal Service

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/ tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

3.6.7 Sharps Collection Program

Company shall provide Sharps containers to requesting Residential Customers, both Single and Multi-Family Cart and Bin Customers. Containers will be delivered to residents' door within one week of request. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$27.50 per container; however, if City implements the door-to-door HHW collection program per Exhibit 9.A, Company shall provide unlimited Sharps containers at no additional charge. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in Exhibit 9, Company may additionally or alternatively arrange for door-to-door Collection of such containers through this program; however, Company shall continue to deliver Sharps containers to residents' door. "Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program, including promoting this program through its website and other outreach activities targeting seniors. This program will be provided at no additional charge to City or Customers beginning the first day of the start of service under this Agreement.

3.7 Containers

3.7.1 Carts

3.7.1.1 Residential Cart Distribution

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, Customers may request one Cart exchange at no charge each year. After one exchange per year, Customers may request Cart exchanges in accordance with the approved rate schedule. One Cart exchange includes all Cart adjustments requested at one time, and multiple Carts and Cart types (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

3.7.1.2 Removal of Existing Containers

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans should and should not be Collected. Company is responsible for all costs associated with Container collection and Disposal or Recycling. Company may retain any scrap value received from the Recycling of collected Containers.

3.7.1.3 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval.

Carts shall include a minimum of 30% recycled material and be recyclable.

3.7.1.4 Capacity

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 30 to 40-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

3.7.1.5 Cart Handles

The Cart handles and handle mounts may be an integrally molded part of the Cart body or molded as part of the lid. The Cart handles will provide comfortable gripping area for pulling or pushing the Cart or lifting the lid. Pinch points are unacceptable.

3.7.1.6 Cart Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;

- Enables the free and complete flow of material from the Container during the dump cycle without interference with the material already deposited in the truck body or the truck body itself and its lifting mechanism;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container;
- The lid handle shall be an integrally molded part of the lid;
- The lid (and body) must be of such design and weight that would prevent an empty Container from tilting backward when flipping the lid open; and,
- The lid shall be hinged to the Cart body in such a manner so as to enable the lid to be fully opened, free of tension, to a position whereby it may rest against the backside of the Container body.

3.7.1.7 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color, matching current colors in distribution. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

3.7.1.8 Cart Labeling

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. The City's logo and, if requested by City, the City website shall appear on the Carts. Company's name and phone number shall be included on a label on the Cart lid (Company's name or logo shall not be visible on the side of the Cart).

3.7.1.9 Identification Markings

All markings on the Containers shall be approved by the City in advance of ordering Carts. Company shall not hot stamp Company name on Carts.

TRASH, RECYCLING or **GREENWASTE** must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

Company shall develop labels identifying materials that are and are not permitted in each Cart type, in English, with graphics and instructions for proper disposal of HHW, and shall place labels on top of all Carts delivered to Customers.

3.7.2 Cart Performance Requirements

All Carts shall be designed and manufactured to meet the minimum performance requirements described below.

3.7.2.1 Cart Load Capacity

Depending on the capacity, the Carts shall have a minimum load capacity as noted below without Container distortion, damage, or reduction in maneuverability or any other functions as required herein.

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70

3.7.2.2 Cart Durability

Carts shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;

- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage, that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.2.3 Chemical Resistant

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

3.7.2.4 Stability and Maneuverability

The Carts shall be stable and self-balancing in the upright position, when either empty or loaded to its maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position.

The Carts shall be capable of maintaining its upright position in sustained or gusting winds of up to 25 miles per hour as applied from any direction.

The Carts shall be capable of being easily moved and maneuvered, with an evenly distributed load equal in weight to its maximum design capacity on a level, sloped or stepped surface.

3.7.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to 25 miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,
- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Container.

3.7.2.6 Reparability

Minor cracks, holes, and other damages to hinges, wheels, axle, hardware, and other component parts shall be readily repairable by the contractor personnel. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein.

3.7.3 Can Design and Performance Requirements

The Cans shall be manufactured by injection or rotational molding and meet the Can design and performance requirements as specified below. All Cans selected shall be subject to City approval.

3.7.3.1 Capacity

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

3.7.3.2 Can Handles

The Can handles will provide comfortable gripping area for carrying the Can.

3.7.3.3 Can Lid

Each Container shall be provided with a lid that continuously overlaps and comes in contact with the Container body or otherwise causes an interface with the Container body that simultaneously:

- Prevents the intrusion of rainwater, rodents, birds, and flies;
- Prevents the emission of odors;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

3.7.3.4 Can Colors

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

3.7.3.5 Identification Markings

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

3.7.3.6 Can Load Capacity

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

3.7.3.7 Can Durability

Cans shall remain durable, and at a minimum, shall meet the following durability requirements to satisfy its intended use and performance, for the term of this Contract:

- Maintain its original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with its intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

3.7.3.8 Chemical Resistant

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

3.7.3.9 Reparability or Replacement

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

3.7.4 Cart and Can Ownership and Maintenance Responsibilities

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The

Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

3.7.5 Bins and Compactors

The Company shall provide Customers with Bins, or Compactors upon request, for Collection of Solid Waste. Customers may obtain Bin Compactors and Roll-Off Compactors from either Company or a third party; the leasing of such equipment is outside the scope of this Agreement. The Company shall maintain its Containers in a clean, sound condition free from Putrescible residue. Containers shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Container, shall be maintained in good repair. Company shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Company shall perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Company shall remove graffiti at no additional charge from any Container within twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, using a method that is acceptable to the City. Company shall repaint Bins upon the City's request.

3.7.6 Rolloff Boxes

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the Company in letters not less than three inches high on the exterior of the Container so as to be visible when the Container is placed for use. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.7.7 Option to Use Existing Carts

City has the sole option to permit Company to continue using Carts and Cans in place at the start of service under this Agreement for businesses and for Residential Customers receiving automated service under the previous Collection agreement. Residents in the Sand Section will receive new Carts when service in this area is automated at the start of service under this Agreement. City will notify Company upon award of this Agreement whether Company may continue to use the Carts and Cans already in distribution, subject to all on-going maintenance and replacement requirements under this Agreement. Exhibit 3-1 includes alternative Residential Cart rates to be applied if this option is permitted. All other rates will remain the same.

3.8 Diversion Requirements

3.8.1 Hauler Diversion Requirements

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation of the waste Collected by Company under this Agreement during each year of this Agreement is as follows:

<u>Calendar Year</u>	<u>Diversion Rate</u>
Remainder of 2011	50%
2012	50%
2013	51%
2014	52%
2015	53%
2016	54%
2017	55%
2018, full or partial year as applicable	55%
2019, full or partial year, if applicable	55%

Diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to CalRecycle). Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants the City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

3.8.2 City-wide Diversion Rate

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the City under this section that are not otherwise required to be implemented under this Agreement will be implemented in accordance with Section 2.10, under which Company may be entitled to an adjustment in compensation.

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 P.M and 7:30 A.M. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. Company shall adjust the early morning start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

For example, a Wednesday holiday would delay Wednesday, Thursday, and Friday collection each to the following day. Friday Residential Collection would be permitted on Saturday. Saturday service would only be provided to seven day per week Customers. Sunday service would be uninterrupted as Sunday service is typically provided to seven day per week customers.

The Company shall be prepared to review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with the City once annually upon 30-day written notice requesting said review. More frequent reviews may be required if operations are not satisfactory based on documented observations or reports of complaints. If the plan is determined to be inadequate by the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

3.9.2 Vehicles

A. General. The Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

B. Specifications. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) years old. All route vehicles shall use liquefied natural gas (LNG) or compressed natural gas (CNG) at the start of service under this Agreement. Company shall be in compliance with all rules and regulations currently in force or passed during the contract term, including SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the Company in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-Off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification. The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

D. Cleaning and Maintenance

- 1) The Company shall maintain all of its 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) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's

- specifications and schedule. The Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) The Company 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. The Company shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
 - 6) Upon request by the City, the Company shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether

or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

- 4) Company shall equip all route vehicles with a GPS tracking system and enable the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

F. City Inspection Per Code. The 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 applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

G. Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

H. Correction of Defects. Following any inspection, the Public Works Director shall have the right to cause the Company, 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 Manager, which decision shall be final.

3.9.3 Litter Abatement

A. Minimization of Spills. The Company 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 are spilled during

Collection, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of spill of any material with the potential to reach the storm drains, including all liquids. Each Collection vehicle shall carry a broom and shovel at all times for this purpose.

The Company 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 the City.

B. Clean Up. During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

3.9.4 Personnel

The Company 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The Company'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.

The Company 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. The Company 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The Company 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.

3.9.5 Identification Required

The Company shall provide its employees, companies and subcontractors with identification for all individuals who may make personal contact with residents or businesses in the City. The City may require the Company to notify Customers yearly of the form of said identification. The Company shall provide a list of current employees, companies, and subcontractors to the City upon request.

The City reserves the right to perform a security and identification check through law enforcement agencies upon the Company and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

3.9.6 Fees and Gratuities

The Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

The Company shall not discriminate in the provision of service or the employment of Persons engaged in performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or State law.

3.9.8 Change in Collection Schedule

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The City's approval of any change in Residential Collection is required prior to such change, and such approval will not be withheld unreasonably.

Any changes in the route map or Collection schedule shall require the prior approval of the City. The City may require changes in the route map or Collection schedule, to improve service, to resolve complaints or for other reasons.

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company shall direct its drivers to note the addresses of any private Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

3.9.10 Waste Watch Program

Company drivers shall be trained to report unusual or suspicious situations that the drivers may see on route to the appropriate emergency responder.

3.10 Transportation, Disposal and Processing

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Site shall be the El Sobrante Landfill [via Company's Carson Transfer Station] and the approved waste-to-energy facility shall be the Southeast Resource Recovery Facility ("SERRF"). The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The City reserves the right to designate the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) at a later date. City and Company will use their best efforts to obtain indemnification against CERCLA, State Environmental Laws, and related claims from the operator of the landfill or other destination the City designates. In the event that City selects a Disposal Site or other Facility, the City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a change in tip fee or transportation costs.

If City directs Company to a facility other than a Solid Waste Facility selected or owned by Company, and use of this Facility adversely affects the ability of the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the City and Company shall meet and confer and mutually agree on revised obligations under Sections 3.8 and 8.3

3.11 Status of Disposal Site

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

3.12 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 Manhattan Beach Solid Waste. Company may request permission from the City for an exception on a case-by-case basis.

3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in the City. The annual route audit information shall include, at 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);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Whether each individual address is Commercial or Multi-Family;
- Number of Residential Dwelling units at each Multi-Family account;
- Service Level per Billing System (Quantity, Size, Frequency);
- Service Level per Routing System;
- Observed Containers (Quantity and Size).
- Bin condition;
- Proper signage; and,
- Graffiti.

Within 30 days after the completion of the route audit, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted

to the Public Works Director and one to the City's billing manager. This summary shall include:

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total (Residential Cart, Multi-Family Bin, and Commercial);
- Types of billing and service exceptions observed;
- Number of billing and service exceptions by type;
- Total monthly billing, pre-audit;
- Total monthly billing, post-audit (subsequent to corrections of identified exceptions; and,
- Percentage of billing and service exceptions:
 - Percentage of the number of accounts with errors to the total number of accounts served;
 - Percentage of the "net" change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
 - Percentage of the "absolute" change in net monthly billing as a result of the audit to the total "pre-audit" monthly billing.

The report shall include a description of the procedures followed to complete the annual 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. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

The report shall also include a description of the changes and the Company's plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

3.14 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, the Company shall notify the Customer in writing, at the time Collection is not made,

through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. The Company 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. The Company 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 the City. In addition to other required notifications, if the Company observes any substances that 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, the Company will immediately notify the Public Works Director or the Public Works Director’s designee.

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

3.15 Hazardous Waste Management Component

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

3.16 Disposal and Facility Capacity Guarantee

Company guarantees capacity for all Solid Waste Collected under this Agreement for the Agreement term at Company’s following Facilities: WM Carson Transfer Station, WM South Gate Transfer Station, Sun Valley Recycling Park (Green Waste), Downtown Diversion (C&D); at one or more of the following landfills as needed: El Sobrante Landfill Lancaster Landfill, Antelope Valley Landfill, and Simi Valley Landfill; and at Agromin (Green Waste). After Company’s Reclaimable Anaerobic Composter is completed, Company guarantees capacity for the pilot, and potential ongoing, Food Waste programs (Company would use third party facilities until completed).

ARTICLE 4

OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services in subsections A and B below.

A. Compost Bin Co-Pay. The Residential Customers' co-pay for compost bins shall be billed by the Company.

B. Rolloff Box and Temporary Bin Services. In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the Company to post a security deposit or pay on a "Cash on Delivery" (C. O. D.) basis. Any unused portion of a security deposit shall be refunded to the Customer within five (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the Company shall invoice monthly or semi-monthly in arrears with payment due within 15 days from the invoice date (i.e., the beginning of the month or the inception of service).

4.1.2 City Billing

City shall perform all billing under this contract, other than Rolloff Box service, temporary Bin service, and compost bin co-pays. City reserves the right to direct Company at any time during the Agreement Term to charge Customers for periodic charges such as Bulky Waste pickups, Cart overage pickups, and Bin Container Overage Fees.

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of the City billing Customers. Payment will be based on City's records of services rendered and will be

subject to subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see 4.1.4 below).

4.1.4 Company Responsible for Service Level Accuracy

Along with the City's monthly payment to the Company (see section 4.1.3 above), the City shall send the Company a list of Customer accounts, and service levels, and billed rates on which the payment is based. The Company shall review this list and must dispute or accept the accuracy of this list within 45 days of receipt. Failure to notify the City in writing within 45 days shall confirm the Company's approval and acceptance of the payment amount.

The Company must also notify City within 72 hours of the Company being notified of any change in service.

4.1.5 Review of Billings

The Company shall review Billings to Customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of Company Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise Fees owed to the City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.6 Suspension of Service Due to Non-Payment

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time

periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.7 Late Fees

Company may assess interest at a rate of 1.5% per month on outstanding balances for services Billed by Company beginning 60 days after invoice is sent. Company may charge insufficient funds fees of no more than \$35.00 per returned check. This section is not applicable to City-billed services, as City pays Company based upon Billings, not receipts.

4.1.8 Franchise Fee

A. Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes Billing of permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

B. Time and Method of Payment

Company shall remit the Franchise Fee payments on or before the thirtieth (30th) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30th) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the Company's services, all in an effort to collect the delinquent Franchise Fees that, together with all other remedies afforded City under this Agreement (including any award of attorney's fees and costs),

and in accordance with applicable laws, are intended to compensate City in any collection efforts in the event of Company's default in the payment of Franchise Fees.

4.2 Customer Service

4.2.1 Office Hours

Company office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays, and from 8:00 A.M. to 12:00 P.M. on Saturday. A responsible and qualified representative of the Company shall be available during office hours for communication with the public at the office. Normal office hour telephone numbers shall be a toll free call. The Company's telephone system and number of representatives shall be adequate to handle the volume of calls typically experienced on the busiest days. A live operator shall answer calls placed during office hours within one minute of the initial ring. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the City staff with the phone number or pager number of a live Person who may be reached 24 hours a day.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, the Company shall Collect the Refuse, Recyclable Materials, and/or Green Waste the same day, if notified by 12:00 noon, otherwise by 5:00 P.M. of the following day, unless Company can provide documentation that Container was not placed for Collection in a timely manner (evidence may include a report by the driver, provided at time of normal Collection, indicating no Container had been placed out for Collection). A summary of missed pickups shall be submitted to the City monthly.

4.2.3 Complaint Documentation

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said log shall include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint and the action taken by the Company to respond to and remedy complaint. All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

4.2.4 Resolution of Customer Complaints

Disputes between the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

4.2.5 Government Liaison

The Company shall designate in writing a "Government Liaison" who shall be responsible for working with the City and/or the City's designated representative(s) to resolve Customer complaints and assist with waste reduction programs. City shall have the right to approve the Company's choice for a liaison.

Government Liaison shall be the community relations liaison for Manhattan Beach business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his\her physical presence when

requested or appropriate at schools, businesses and business organizations, community events, Environmental Task Force meetings, City Council meetings and workshops, et al.

4.2.6 Service Liaison

Company shall designate in writing a field supervisor (i.e. route manager) as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints, and strategize with City on an on-going basis regarding more efficient Collection practices. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

4.2.7 Customer Service Liaison

Company shall designate a customer service representative to which the City can direct customers that contact the City with Solid Waste service questions. Customers Service Liaison will take responsibility for completing and closing out work orders within the City's designated work order system.

4.2.8 School Outreach Liaison

Company shall designate a School Outreach Liaison to oversee and coordinate all waste reduction activities under Section 4.3.8 below.

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Zero Waste Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to significantly exceed AB 939 requirements. Accordingly, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods

acceptable to the City. Any outreach material utilizing paper, provided and distributed by the Company, shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for approval by the City prior to the Effective Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall assist the City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to the City. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

Company will provide a minimum of the following public education items to be developed at Company's expense and distributed, after City approval, as indicated below:

- **Initial Cart Selection Mailing** – Company shall prepare and distribute the mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** – At least 30 days prior to August 1, 2011, Company will prepare and mail, using City-provided labels, an initial mailing to Residential and Commercial Customers explaining the transition from the existing programs to the new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information. For Residential Cart Customers, this mailing will be in addition to the initial mailing requesting Cart Customers to select Cart sizes and numbers.
- **Web-based Program Catalogue** - Company shall be required to develop and provide updated information details for each program to City in an "e-book" or "e-magazine" format, or an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.

- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract is in effect, using City-provided mailing labels.
- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at the City’s request and with City’s review and approval of the materials. Notices will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** - Company shall provide a representative able to visit civic groups, school assemblies, homeowners’ associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the Company shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material.

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under the new Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Zero Waste Community Events

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the City's Zero Waste programs.

4.3.5 Use of "Manhattan Beach Recycles" Program Name

The program name "Manhattan Beach Recycles" refers to all Solid Waste management services available to the residents of the City. This name is the exclusive property of the City. City confers a revocable license to Company to use "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

Company shall provide in-unit Recycling Containers to each Multi-Family Bin Customer Dwelling Unit upon request of individual Dwelling Unit, property owner or manager. In-unit Containers shall be hot stamped or labeled with items that may be placed in the Recycling Container, and shall not carry Company logo and shall become the property of the City upon distribution. City logo may be used. Company will provide all property managers and Residents with Bin service with Recycling program guidelines, posters to be placed in laundry rooms, refuse/recyclable container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin Customer service. Company shall contact each Multi-Family Customer building owner or property manager by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the recyclables containers.

Company shall prepare and mail a brochure with recycled content and labeled "Made from Recycled Paper" at least once per year to each Multi-Family Dwelling unit that does not individually receive semi-annual and quarterly notices under Section 4.3.2; brochure shall describe all Solid Waste programs and holiday schedules as they apply to Multi-Family Cart Customers and to Residential Bin Customers.

Company commits a minimum of 400 hours of Company staff, or third-party contractor, time per year towards meeting Multi-Family outreach efforts as described in this section.

4.3.7 Commercial Outreach Recognition Program

Company commits a minimum of 600 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

Green Business Certification Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

Awards will be presented annually at an event, Council meeting or award ceremony to be mutually agreed upon by City and Company. Company will provide selected companies with an award to be mutually agreed upon by City and Company.

Zero Waste Green Works – Promoting Recycling at the Work Place

Company will provide businesses with recycled-content prizes such as reusable water bottles, reusable grocery bags, and/or other incentives for managers to provide to employees who contribute to the business’ Zero Waste green program.

Company will provide business managers with promotional information, flyers and instructional posters made from recycled paper and labeled “Made from Recycled Paper” to implement a comprehensive waste reduction and recycling program, including information on what cannot be placed in the recycling container (i.e.: HHW).

Company shall provide initial and on-going consultation and support to businesses who request it to ensure long term success of their business' waste reduction and recycling program.

4.3.8 School Zero Waste Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District and private schools, to promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative recycling containers to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;
- Conduct a minimum of one assembly promoting recycling at each school in the City each year;
- Education and training on proper recycling and waste reduction techniques to students and teachers and web-based resources for the district and schools' websites;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations, including composting classes, aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program;
- Conduct annual CRV fundraising campaigns;
- Proper signage for all school sites;

- Provide teachers with sample lesson plans and activity sheets made from recycled paper and labeled “Made from Recycled Paper” on relevant topics on an as requested basis; and,
- Contact each school at least once per semester to offer all services included in this section. City or school may request that more frequent contacts be made. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at schools, Company shall make an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management, janitorial staff, faculty and student volunteers to ensure that improved recycling and waste reduction techniques have been implemented.

Company commits a minimum of 500 hours of Company staff, or third-party contractor, time per year towards meeting School outreach efforts as described in this section. Time allocated to contacting schools to offer programs shall not be counted towards minimum.

Re-Use Lunch Kits – Company shall provide reusable lunch kits to each first grader in the Manhattan Beach Unified School District each year. Company will purchase these kits from a local company “Go Green Lunch Box” to support the local economy. These kits shall be provided at no additional cost.

4.3.9 Manhattan Beach Education Foundation

Company will contribution \$25,000 per year to Manhattan Beach Education Foundation (“MBEF”).

4.3.10 Reallocation of Hours

Company may request approval from City to reallocate the minimum guaranteed hours among the three sectors, Multi-Family, Commercial and School outreach. Upon advance written approval from City, approval over which City has sole discretion, Company may reallocate hours.

4.3.11 Recycling Facility Tours

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

4.3.12 Recycling and Take-Back Programs

Synthetic Carpet Pilot Program – Company will offer a one-year pilot program whereby Company will Collect and Recycle synthetic carpet, up to 600 square feet, cut and rolled for Collection by one driver from Customer’s Residential or Commercial premises. In addition, City has the option to request that Company provide a locked storage Container at a City facility for Customers to drop-off synthetic carpet. This program will be provided at no additional cost to City or ratepayer. After completion of the one-year pilot program, Company and City will discuss the program results and the cost if the City wanted to continue the program.

Donation Box – If requested by City, Company will place a taper-free donation box at a City facility for Customers to drop off donation items to be determined by City and Company at the time of project implementation. Company will Collect donations for redistribution. City staff would be responsible for accepting donations and calling for Company pickup if City requests this service. Company will track and report tonnage diverted and Disposed through this program.

Recycling Rewards Clean Cart Challenge – Three months each year, Company will randomly assess Single and Multi-Family Recycling Carts and Bins and provide a reward to Customers whose Recycling Containers have less than 5% contamination. Company will promote this program on its website, in community newspaper ads and other media outreach throughout the term of the Agreement. This program will be provided at no additional cost to City or ratepayers. Company and City will review the

performance of this program in increasing diversion on an as-needed basis, and agree to negotiate with respect to changes in the program or substitution of new programs to increase diversion.

Manhattan Beach Middle Management Program (“MBMMP”) – Company will support MBMMP through services such as beach cleanups, composting classes, and supply donations of gloves, bags and give-a-way items.

LA Shares Data Base – Company will work with LA Shares and develop a website for the redistribution of donated materials to non-profits and schools. This website will be similar to the LA Shares website in use for the City of Los Angeles. Initial program implementation will be for one year. Company and City will review the performance of this program at the end the initial one-year period, and agree to negotiate with respect to continuation of the program, changes in the program, or substitution of new programs to increase diversion.

At no additional cost, Company will promote and conduct:

- An annual Residential curbside Collection program for reusable items including textiles/clothes.
- An annual shred day, whereby Residents and businesses can deliver paper for confidential shredding.
- Five community shoe donation collection events, and shoe redistribution.
- An annual Halloween costume donation/exchange event.

4.3.13 Construction Waste Disposal Assistance

Company will provide consultations to contractors requesting Construction and Demolition Waste services on earning points towards LEED certification.

4.4 Waste Generation/Characterization Studies

Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939.

Company 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 (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Company 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.

4.5 Grant Writing

Company will assist the City with grants by actively seeking, writing, and managing grants, and reporting grant funds at no additional cost.

ARTICLE 5

COMPANY COMPENSATION AND RATES

5.1 General

The Company Compensation provided for in this Article shall be the full, entire and complete compensation due to the Company pursuant to this Agreement for all services, labor, equipment, materials and supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required and reasonably anticipated by this Agreement in the manner and at the times prescribed.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

5.2 Initial Rates

The Company Compensation from the start of service under this Agreement through June 30, 2012 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2012, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The City may, at its discretion, decrease the rates in accordance with Section 5.4 in the event that the rate adjustment formula produces a decline. If any rates would decline based upon Section 5.4 calculations and a rate decrease is not implemented, the subsequent rate adjustment shall be based upon the average changes in indices since previous rate adjustment instead of the average change over the prior year.

The rate adjustments shall apply to the Company Compensation rates included in Exhibit 3. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

5.4 Method of Adjustments

5.4.1 General

For Rate Years beginning July 1, 2012, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year.

5.4.2 Cost Components for Rate Adjustment Indices

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor (1)</u>
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	30%	48%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	6%	13%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	17%	28%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste	40%	N/A	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average or 5%, whichever is lower
Transformation	1%	N/A	Actual change in the per ton gate rate at the waste-to-energy facility approved for use
All Other	6%	11%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

5.4.3 Rate Adjustment Steps

Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 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.

Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

5.5 Extraordinary Adjustments

Company may request an adjustment to maximum rates at reasonable times other than that allowed under Section 5.3 and 5.4 of this Agreement in the event of extraordinary changes in the cost of providing service under this Agreement. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of the rate based on an increase or decrease in a direct per ton surcharge assessed at the disposal site or transfer

station by Federal, State or local regulatory agencies after the effective date of this Agreement, to the extent the percentage change in these adjustments exceed the cumulative percentage change in the Disposal component adjustments granted under Section 5.3.

For each request for an adjustment to the maximum rates that Company may charge Customers brought pursuant to this section, Company 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 Company in preparing the estimate. Company 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 Company's annual financial statements in connection with the City's review of Company's rate adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

City shall review Company's request and, in City's sole judgment and absolute 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 Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the Company shall be present and shall participate, to review the Solid Waste Collection, source reduction, processing and other diversion services and overall performance. The purpose of the hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided with adequate quality, effectiveness and economy.

Forty-five (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the City's ability to significantly exceed the goals of AB 939 and to contain costs and minimize impacts on rates.
- b) Any specific plans for provision of changed or new services by the Company.
- c) Results of the most recent route audit as described in Section 3.13.

The reports required by this Agreement regarding Customer complaints shall be used as one basis for review. The Company may submit other relevant performance information and reports for consideration. The City may request the Company to submit specific information for the hearing. In addition, any Customer may submit comments or complaints during or before the hearing, either orally or in writing, and these shall be considered.

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results,

feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

Not later than sixty (60) days after the conclusion of each Solid Waste Services and Performance Review Hearing, the City may issue a report. As a result of the review, the City may require the Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation and the City may direct or take corrective actions for any performance inadequacies.

6.2 Performance Satisfaction Survey

If requested by the City, Company will create and conduct a survey at Company's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1. City shall notify Company of its desire for such a survey at least 90 days in advance of the Solid Waste Services and Performance Review Meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Company. The Survey will be distributed to a minimum of ten percent (10%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Company to send out separate Single Family and Multiple-Family/Commercial surveys. Company shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may choose to write or re-write the survey. City may require that Company have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

The Company 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, the Company agrees to conduct data Collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulation and to meet the reporting and Solid Waste program management needs of the City, in particular, reporting obligations imposed by AB 939. 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 the City, the records and reports to be maintained and provided by the Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 five (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records shall be maintained and expense and revenue information for the City shall be segregated from other areas served by the Company.

7.2.3 Solid Waste Service Records

Records shall be maintained by the Company for the City relating to:

- a) Customer services and billing (for limited services billed by Company);
- b) Routes;
- c) Facilities, equipment and personnel used;
- d) Complaints;
- e) Missed pick ups;
- f) Number of Refuse, Recycling, and Green Waste Containers, both Residential and Commercial;
- g) Tons Collected, processed, diverted, and disposed by type of service, waste stream and Customer; and,
- h) Weight of each Recyclable Material recovered at a MRF, if one is utilized.

7.2.4 CERCLA Defense Records

The City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

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 Biennial Audit

Company shall fund biennial audits as described below. 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. The first audit will be based on the Company's reports and records for Fiscal Year 2012 and may be conducted as soon as relevant data, such as tonnage, is available. Audits will be performed every other year thereafter (the biennial audit). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

7.2.7 Payments and Refunds

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the City of service level or other Customer changes or for any other reason, for the period under review, in addition to any other remedies which may be available to City, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to shall be due and payable (30) days following the date of the audit.

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 efficiency of operations;
- b) Evaluate past and expected progress towards significantly exceeding AB 939 goals and objectives;
- c) Determine needs for adjustment to programs; and,
- d) Evaluate Customer service and complaints.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The Company will provide a certification statement, under

penalty of perjury, by an authorized Company official, that the report being submitted is true and correct.

Monthly reports shall be submitted within twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the City, as directed, and to:

Public Works Director (or designated representative)
Department of Public Works
3621 Bell Avenue
Manhattan Beach, CA 90266

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) in tons, and the Facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Commercial Food Waste Diversion Program Participants, if applicable.

- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.
- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.
- j) Report of contacts, visits and results of Multi-Family Customer visits in accordance with Section 4.3.6.

7.3.3 Quarterly Reports

Report should contain at a minimum the information required in the monthly report and the following:

- a) Complaint summary for the quarter summarized by nature of complaints on a compatible computer disc.
- b) Copies of promotional and public education materials sent during the quarter.
- c) Other information or reports that the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling programs with Company, and their service levels.

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.

- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated companies, and of other entities that may perform services under this Agreement, as the City may request.
- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
- f) Number of routes and route hours per day by type of service.

7.3.5 Financial Report

The City may, at the City's option, request the Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing the Company'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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

The Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to the City (or the City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by the Company's CPA shall be included in the cost of the audit.

At the City's request, the Company shall provide the City with copies of working papers or other documentation deemed relevant by the City relating to information shown in the disclosure letter. The disclosure letter shall be provided to the City.

7.4 Adverse Information

A. Reporting Adverse Information. The Company shall provide the City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

B. Failure to Report. The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

7.5 Right to Inspect Records

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

The Company hereby agrees to and shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, 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) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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; (3) the acts of the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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 or active negligence, willful misconduct or breach of this Agreement. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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" or

the limits of the City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

The Company's duty to indemnify and defend from the aforementioned events arising during the Term of the Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

The Company shall defend with counsel reasonably acceptable to the City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, Damages) of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, companies or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in the City. The

foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of the Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by the City with respect to the waste stream Collected under this Agreement. Company’s indemnification of the City is subject to all of the following restrictions:

- a. The Company’s obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Section 41000 *et. seq.* of the Public Resources Code.
- b. No payment required under the company’s obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company’s breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the company’s breach or non-compliance resulted from City’s action

or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

8.4 Insurance

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$5,000,000) per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

D. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages
 - a) The City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
 - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
 - d) Coverage shall state that the Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the Term.

G. Companies and Subcontractors. The Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

b) "The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company's liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for one hundred (100) years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City's risk manager and City attorney before destroying copies of such policies. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.
2. In the event any services are delegated to another company or subcontractor, the Company shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due the Company.

8.5 Performance Bond

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to

cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

In the event the Company shall for any reason become unable to, or fail in any way to, perform as required by this Contract, the 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, the Company shall restore the performance bond to its face amount within 30 days of the City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.7 Performance Bond Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 3.8, will not be substantiated until after the final service date. Therefore, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (18) months after the end of the Term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

8.8 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property shall be repaired or replaced by Company at Company's sole expense.

8.9 Pavement Damage

Company shall be responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by Company's, or Company's subcontractor's, vehicles or employees. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to the Company; and/or (2) to take possession of any or all of the Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and

provide such other service as may be necessary to maintain said property in operational condition.

C. The City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if the City so desires, employees previously or then employed by the Company. The Company further agrees, if the City so requests, to furnish the City the services of any or all management or office Personnel employed by the Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

The City agrees that it assumes complete responsibility for the proper and normal use of such equipment and Facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to the City During the City's Possession

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

Except as otherwise expressly provided in the previous paragraph, the City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

9.5 Duration of the City's Possession

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to the Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by the Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. Insolvency or Bankruptcy.** If the Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the Company 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 Company is entered.
- E. Failure to Perform.** If the Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two (2) consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) days of the demand,

with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by the Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Environmental Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company 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.

H. False or Misleading Statements. Any representation or disclosure made to the City by the Company 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.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If the Company fails to provide reasonable assurances of performance as required under Section 10.6.

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

10.2 Criminal Activity of Company

Should the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Company has been given notice and opportunity to present evidence in mitigation. The term "found guilty" shall be deemed to include any judicial determination that Company or any of Company's officers, directors or employees is guilty and any admission of guilt by Company or any of Company's officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge" entered as part of any plea bargain. If the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. The City finds, and the Company 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 the City as a result of a breach by the Company of its 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) the services provided under 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 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 Collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the Franchise to 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the 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.

Company _____ City _____
Initial Here _____ Initial Here _____

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

1. **Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five (5) such failures annually: \$ 50.00
- c) For each failure to correct a missed pickup within the timing allotted for correction per Section 4.2.2, and for each additional business day in which the Collection is not made up, which exceeds ten (10) such failures annually: \$50.00/day
- d) 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: \$150.00

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) such occurrences annually: \$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually: \$150.00

- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) such occurrences annually:

\$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten (10) such failures annually:

\$150.00
- f) For each failure to deliver a Rolloff Box or temporary Bin within 48 hours of a Customer's request:

\$ 50.00

3. **Customer Responsiveness**

- a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed:

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:

\$250.00
- c) For each failure to notify City within one (1) hour from the time Company has remedied a complaint forwarded by City.

\$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one business day of request from City or Customers:

\$150.00
- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Company.

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversions Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the diversion requirement each year per Section 3.8.1, beginning with the first full calendar year 2012, and including any partial calendar year at the end of the term: \$25 per ton

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 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 11.8: \$1,000/day

The 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.

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

C. Amount. The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. Timing of Payment. The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes,

other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Company's employees or directed at the Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to the City within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval and Company shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.
- 2) Notify Public Works Director sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Company shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Company is not excused from performance and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures In Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 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.

Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a “reverse 911” contact method to reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company 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, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

10.6 Assurance of Performance

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

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement, and all Persons performing such services. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

11.2 Compliance with Law

In providing the services required under this Agreement, the Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the Term.

11.3 Governing Law

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

11.4 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.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 10 (the City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of Ownership or control of the Company; (iv) any assignment by operation of law, including 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) 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 the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the Company's experience, skill and

reputation for conducting its operations 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) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which the city shall deny or approve in its reasonable discretion. No request by the Company for consent to an assignment need be considered by the City unless and until the Company has met the following requirements:

- a) Company shall pay City its reasonable expenses for attorney's and/or consultant'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 Company 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.
- b) The Company shall pay a transfer fee to the City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided;

- 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 Company's operations.

- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the 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 sale of operations conducted by the Company 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 the City with a complete list of 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall the City be obliged to consider any proposed assignment by the City if the Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties 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.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Company shall be responsible for coordinating transfer immediately after Company's final pickups, so as not to disrupt service. Company 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. Company shall provide means of access to the new service provider at least one full Working 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.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that customers neither need to find storage for two sets of containers nor go without a container for an inconvenient length of time.

11.9 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.

11.10 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 that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 The Company's Investigation

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

11.12 Condemnation

The City fully reserves the rights to acquire the Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive, and not intended to alter the rights of the parties set forth in Article 10.

11.13 Notice

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

If to the City: City Manager
 City of Manhattan Beach
 1400 Highland Avenue

Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

And to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to the Company: USA Waste of California, Inc.
1920 East 213th Street
Long Beach, CA 90810
Attn: District Manager

Copy to: USA Waste of California, Inc.
Area General Counsel
7025 Scottsdale Road, Suite 200
Scottsdale, AZ 85253

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

11.14 Representatives of the Parties

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

11.15 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, the City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the Term. Without limiting the generality of the foregoing, the City may solicit proposals from the Company and from third parties for the provision of 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 under Section 10 of this Agreement.

11.16 Compliance with Municipal Code

The Company shall comply with those provisions of the municipal code of the City which are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. If changes to the municipal code of the City made after the execution of this Agreement are in conflict with this Agreement, the terms and conditions set forth in this Agreement shall prevail.

11.17 Privacy

The Company 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 the Company 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 so long as City maintains reports or records with Customer

identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.18 Compliance with Immigration Laws.

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

11.19 Proprietary Information, Public Records

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

11.20 Guarantee of Company's Performance

Pursuant to a guarantee in substantially the form attached as Exhibit 5, Waste Management Holdings, Inc., a Delaware corporation which owns all of the issued and outstanding common stock of USA Waste of California, Inc., has agreed to guarantee the Company's performance of this Agreement. The Guarantee is being provided concurrently with the Company's execution of this Agreement.

11.21 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

12.2 Section Headings

The article headings and section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

12.3 References to Laws and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

12.4 Interpretation

This Agreement, including the exhibits 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.

12.5 Agreement

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

12.6 Severability

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

12.7 Exhibits

Each of the Exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, the City and the Company have executed this Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH

("City")

ATTEST: _____
CITY CLERK

By: _____
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

USA Waste of California, Inc.
COMPANY NAME

By: Larry Metter

City Attorney

Name: Larry Metter

Title: Vice President

EXHIBIT 1
COMPANY PROPOSAL

EXHIBIT 2
PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 3
MAXIMUM INITIAL COMPANY COMPENSATION

Residential Monthly Rates (through July 30, 2012)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate			
	Standard Service - New Carts	Standard Service - Used Carts	Extra Refuse Cart	Backyard Service Surcharge (2)
96-gallon refuse ⁽¹⁾	\$ 17.11	\$ 16.25	\$ 8.00	\$ 7.00
64-gallon refuse ⁽¹⁾	\$ 13.11	\$ 12.25	\$ 6.00	\$ 7.00
35-gallon refuse ⁽¹⁾	\$ 9.11	\$ 8.25	\$ 4.00	\$ 7.00

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building		
	Standard Service - New Carts	Standard Service - Used Carts	Backyard Service Surcharge (2)
2 Dwelling Units	\$ 23.69	\$ 22.17	\$ 14.00
3 Dwelling Units	\$ 35.54	\$ 33.26	\$ 21.00
4 Dwelling Units	\$ 47.38	\$ 44.34	\$ 28.00
5 Dwelling Units	\$ 59.23	\$ 55.43	\$ 35.00
6 Dwelling Units	\$ 71.07	\$ 66.51	\$ 42.00
7 Dwelling Units	\$ 82.92	\$ 77.60	\$ 49.00
8 Dwelling Units	\$ 94.76	\$ 88.68	\$ 56.00
9 Dwelling Units	\$ 106.61	\$ 99.77	\$ 63.00

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

Note: Additional refuse carts for customers with 2 to 9 units, and additional recycling and green waste carts for all residential cart customers shall be provided at no additional charge.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through July 30, 2012)
Commercial Bin Rates

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 13.86	\$ 27.72	\$ 41.58	\$ 55.44	\$ 69.30	\$ 83.16	\$ 97.02	\$ 3.50
32-Gallon Cart	\$ 13.86	\$ 27.72	\$ 41.58	\$ 55.44	\$ 69.30	\$ 83.16	\$ 97.02	\$ 3.50
64-Gallon Cart	\$ 27.72	\$ 55.44	\$ 83.16	\$ 110.88	\$ 138.60	\$ 166.32	\$ 194.04	\$ 7.00
96-Gallon Cart	\$ 41.58	\$ 83.16	\$ 124.74	\$ 166.32	\$ 207.90	\$ 249.48	\$ 291.06	\$ 10.00
2 Cubic Yard	\$ 67.68	\$ 105.77	\$ 141.00	\$ 176.27	\$ 211.52	\$ 282.02	\$ 352.51	\$ 19.35
3 Cubic Yard	\$ 86.93	\$ 134.18	\$ 178.89	\$ 223.62	\$ 268.34	\$ 357.77	\$ 447.22	\$ 29.00
4 Cubic Yard	\$ 104.15	\$ 162.78	\$ 217.03	\$ 271.29	\$ 325.54	\$ 434.07	\$ 542.58	\$ 38.69
6 Cubic Yard	\$ 133.89	\$ 209.26	\$ 279.02	\$ 348.78	\$ 418.53	\$ 558.05	\$ 697.55	\$ 58.01
2 Cubic Yard Compactor	\$ 115.55	\$ 180.53	\$ 240.70	\$ 304.07	\$ 361.07	\$ 481.47	\$ 601.95	\$ 33.04
3 Cubic Yard Compactor	\$ 147.35	\$ 230.30	\$ 309.22	\$ 383.74	\$ 460.46	\$ 613.98	\$ 767.50	\$ 49.15
4 Cubic Yard Compactor	\$ 179.38	\$ 280.29	\$ 373.73	\$ 467.11	\$ 560.60	\$ 747.42	\$ 934.40	\$ 66.64
6 Cubic Yard Compactor	\$ 231.43	\$ 361.68	\$ 482.27	\$ 602.80	\$ 723.36	\$ 964.49	\$ 1,205.62	\$ 100.27
2 Cubic Yard Split Bin (1)	\$ 64.18	\$ 102.69	\$ 136.89	\$ 171.11	\$ 205.34	\$ 273.10	\$ 341.37	\$ 19.35
3 Cubic Yard Split Bin (1)	\$ 65.93	\$ 104.17	\$ 138.86	\$ 173.58	\$ 208.29	\$ 277.03	\$ 346.29	\$ 29.00
4 Cubic Yard Split Bin (1)	\$ 67.68	\$ 105.77	\$ 141.00	\$ 176.27	\$ 211.52	\$ 282.02	\$ 352.51	\$ 38.69

(1) Assumes half refuse, have recyclables.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through July 30, 2012, new or used cart option)

Rolloff Box Rates

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	\$ 154.51 per pull
Compactor Box, Any Size	\$ 208.59 per pull
Rolloff Per Ton Charges	
Refuse Disposal	\$ 52.96 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 50.12 per ton
Additional Container Rental - (for boxes emptied less than 3x/ month)	
Standard Box, Any Size	\$ 27.60 per week
Compactor Box, Any Size	\$ 27.60 per week

Optional C&D Rates

Rate Per Pull, Excluding Disposal	
25-40 cubic yard roll-off box	\$ 154.51 per pull
Low Boy (10 cubic yard) roll-off box	\$ 154.51 per pull
Rolloff Per Ton Charges	
Mixed Loads of C&D Debris	\$ 35.02 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
Temporary Bin Service	
First Dump, including delivery and disposal	\$ 81.21 per dump
Additional dumps, including disposal	\$ 27.06 per dump

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through July 30, 2012, new or used cart option)

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 72.28	\$ 81.21	\$ 90.14	\$ 108.01
Each Additional Dump	\$ 18.13	\$ 27.06	\$ 35.99	\$ 54.12
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)

EXHIBIT 4A

EXAMPLE CART & 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)	107.30	109.15	1.7%		
2	Fuel	(2)	344.0	159.1	-53.8%		
3	Equipment	(3)	118.9	124.3	4.5%		
4	Disposal	(5)	215.8	219.2	1.6%		
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%		
6	All Other	(4)	215.8	219.2	1.6%		
Step Two: Determine components							
Row	Adjustment Factor	Index	D	E	F		
			Cost Factor Category Weighted as a % of Component Total (7)	Percent Change In Index (from Column C)	Total Weighted Change (Columns D x E)		
7	Labor	(1)	30.0%	1.7%	0.5%		
8	Fuel	(2)	6.0%	-53.8%	-3.2%		
9	Equipment	(3)	17.0%	4.5%	0.8%		
10	Disposal	(5)	40.0%	1.6%	0.6%		
11	Transformation	(6)	1.0%	14.6%	0.1%		
12	All Other	(4)	6.0%	1.6%	0.1%		
13	Total		100.0%		-1.1%		
Step Three: Apply percentage change to rates							
Row	Rate Category	Current Contractor Rate (8)	G	H	I	J	
			Total Weighted Percent Change (from Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)		
14	64-gallon Cart - new carts	\$ 13.11	-1.1%	\$ (0.14)	\$ 12.97		
15	2 unit Service	\$ 23.69	-1.1%	\$ (0.26)	\$ 23.43		
16	1 unit backyard surcharge	\$ 14.00	-1.1%	\$ (0.15)	\$ 13.85		
17	2 unit backyard surcharge	\$ 21.00	-1.1%	\$ (0.23)	\$ 20.77		
18	Extra bulky item	\$ 21.60	-1.1%	\$ (0.24)	\$ 21.36		
19	Special Pickup/Cart Ov.	\$ 5.00	-1.1%	\$ (0.06)	\$ 4.94		
20	Commercial Can	\$ 13.86	-1.1%	\$ (0.15)	\$ 13.71		
21	3 yd bin, 1x week	\$ 86.93	-1.1%	\$ (0.96)	\$ 85.97		
22	3 yd comp., 1x week	\$ 147.35	-1.1%	\$ (1.62)	\$ 145.73		
23	3 yd bin, extra pickup	\$ 29.00	-1.1%	\$ (0.32)	\$ 28.68		
Step Four: Re-weight 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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	30.0%	1.7%	0.5%	30.5%	30.8%
25	Fuel	(2)	6.0%	-53.8%	-3.2%	2.8%	2.8%
27	Equipment	(3)	17.0%	4.5%	0.8%	17.8%	18.0%
28	Disposal	(5)	40.0%	1.6%	0.6%	40.6%	41.1%
29	Transformation	(6)	1.0%	14.6%	0.1%	1.1%	1.1%
30	All Other	(4)	6.0%	1.6%	0.1%	6.1%	6.2%
31	Total		100.0%			98.9%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.
 (2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*
 (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.*
 (4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*
 (5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change., capped at 5% annually.*
 (6) Gate rate at transformation facility (if applicable)
 (7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.
 (8) Example rates listed. Adjustment applies to all applicable rate categories.

* See Exhibit 4C.

EXHIBIT 4B

EXAMPLE ROLL-OFF BOX 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	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/Ton	(5)	215.8	219.2	1.6%

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 (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	48.0%	1.7%	0.8%
9	Fuel	(2)	13.0%	-53.8%	-7.0%
10	Equipment	(3)	28.0%	4.5%	1.3%
11	All Other	(4)	11.0%	1.6%	0.2%
12	Service Component Total		100.0%	n/a	-4.7%
13	Refuse/Ton	(5)	100.0%	1.6%	1.6%

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 H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll off Box Pull Rate	\$ 154.51	-4.7%	\$ (7.26)	\$ 147.25
15	Compactor Roll off Box Pull Rate	\$ 208.59	-4.7%	\$ (9.80)	\$ 198.79
16	Refuse/Ton	(5) \$ 52.96	1.6%	\$ 0.85	\$ 53.81

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 Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	48.0%	1.7%	0.8%	48.8%	51.2%
18	Fuel	(2)	13.0%	-53.8%	-7.0%	6.0%	6.3%
19	Equipment	(3)	28.0%	4.5%	1.3%	29.3%	30.7%
20	All Other	(4)	11.0%	1.6%	0.2%	11.2%	11.8%
21	Total		100.0%			95.3%	100.0%

- (1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.*
 (2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.*
 (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.*
 (4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.*
 (5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change., capped at 5% annually.*
 (6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

* See Exhibit 4C.

EXHIBIT 4C

EXAMPLE CALCULATION FOR AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal” and “all other” cost components in Column C.

Consumer Price Index - All Urban Consumers, U.S. City Average
All items less food and energy, CUUR0000SAOL1E

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235

Average Annual Change: **1.7%**

EXHIBIT 5

CORPORATE GUARANTY

Guaranty

THIS GUARANTY (the "Guaranty") is given as of the ____ day of ____, 2011.

THIS GUARANTY is made with reference to the following facts and circumstances:

A. USA Waste of California, Inc., hereinafter ("Owner") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by Waste Management Holdings, Inc., (Guarantor).

B. Owner and the City of Manhattan Beach ("the City") have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.

C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, or cause to perform them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. Guarantor's Obligations Are Absolute. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. Waivers. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts. Guarantor appoints the following Person as its agent for service of process in California:

CT Corporation System
818 W. 7th Street
Los Angeles, CA 90017

With a copy by certified mail to:

Corporate Secretary
Waste Management Holdings, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City:

City Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

with a copy to the City Counsel at the same address.

To the Guarantor:

Corporate Secretary
Waste Management Holdings, Inc.
1001 Fannin, Suite 4000
Houston, TX 77002

By: _____
(title)

By: _____
(title)

EXHIBIT 6

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, _____, a _____ corporation, as PRINCIPAL, and _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the contract.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____ DAY OF _____, 2010.

a _____ Corporation

SURETY

By: _____
(PRINCIPAL)

By: _____
(ATTORNEY IN FACT)

(SEAL)

(SEAL)

EXHIBIT 7

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 the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company 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:

EXHIBIT 8

CITY SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

EXHIBIT 9

OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.40 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.40 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2012.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);

- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and
- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist's paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with a program description, the start date, materials to be collected, and instructions on how to call in for a pickup. Company shall be required to update the City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of the City's "e-book") in public education mailers required under Section 4.3.2.

B. Additional Processing of Bin Route Refuse

City may request to have Company process sufficient Refuse that is Collected on Bin routes to recover a minimum of 3,549 tons per calendar year from this program, including the 1,365 tons required to be recovered under Section 3.5 and an additional 2,184 tons to be recovered. These annual tonnage requirements shall be pro-rated if program begins or ends partially through a calendar year. City may instruct Company to begin the additional processing upon 90 days notice, with a corresponding Company Compensation increase of 16% to be applied to monthly Bin Collection service rates and extra bin pickup rates and temporary Bin service, but excluding ancillary service rates such as Bin rental or locking Bin charges.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not include any business instruction and therefore does not need to be placed in outreach materials.

C. Exclusive Construction and Demolition Debris Collection

City reserves the right to require Company to exclusively Collect all Construction and Demolition Waste generated in the City at rates not to exceed the rates included in Exhibit 3 at any time during the Agreement Term. Company will be required to divert a minimum of 70% of all Construction and Demolition Waste Collected from landfilling under this option. Construction and Demolition Wastes does not apply towards diversion requirements under Section 3.8.1. Such maximum rates shall be adjusted in accordance with Article 6. This does not preclude City from continuing to permit open competition, to select another exclusive hauler for Construction and Demolition Waste, to competitively procure an exclusive Construction and Demolition Waste collector, or to negotiate with Company for Construction and Demolition Waste Collection.

EXHIBIT 10

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

EXHIBIT 11

COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”