

AMENDED, REVISED AND
RESTATED AGREEMENT

BETWEEN

CITY OF PLACENTIA,
A Charter City and Municipal Corporation

AND

REPUBLIC WASTE SERVICES
OF SOUTHERN CALIFORNIA, LLC,
a wholly owned subsidiary of
REPUBLIC SERVICES, INC.,
dba PLACENTIA DISPOSAL

FOR

SOLID WASTE HANDLING SERVICES

Effective July 20, 2010

AGREEMENT

This Amended, Revised and Restated Agreement for Solid Waste Handling Services ("Agreement") is made and entered into as of the date of the last signature to this Agreement ("Effective Date"), by and between the City of Placentia, a Charter City and municipal corporation ("City") and Republic Waste Services of Southern California, LLC, a wholly owned subsidiary of Republic Services, Inc. a Delaware Limited Liability Company, doing business as Placentia Disposal ("Contractor") (collectively, the "Parties") to provide an exclusive franchise for Solid Waste Handling Services within the City.

A. Recitals.

(i). The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939"), has declared that it is in the public interest to authorize and require local agencies to make adequate provision for the disposal of all Solid Waste within their jurisdictions.

(ii). Pursuant to California Public Resources Code § 40059(a)(1), the City Council of the City has determined that the public health, safety, and welfare require that an exclusive franchise agreement be awarded to a qualified solid waste enterprise for Solid Waste Handling Services within the City Limits.

(iii). City previously entered an Amended and Restated Agreement for Refuse Collection with Contractor's predecessor in interest on or about February 7, 1989, which was amended on or about May 8, 1990 and August 15, 1995 (the "Original Agreement"). It is the desire of the Parties, by entering this Agreement, to supersede the Original Agreement, except with respect to certain continuing obligations as more fully set forth herein.

(iv). City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), all as may be amended from time to time hereinafter. City and Contractor desire to leave no doubt as to their respective roles, to memorialize the same by entering into this Agreement, and to reconfirm that City is not thereby becoming an "arranger" or a "generator" as those terms are used in CERCLA, and that it is Contractor, not City, who is "arranging for" the collection, transport for disposal, composting, and recycling of municipal Solid Waste in the City which may contain hazardous substances. City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its collection methods, nor supervise the collection process, nor do the Parties intend to place title to such Solid Waste in City, but rather intend that whatever, if any, title in and to such Solid Waste that otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor, and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its customers and is not the result of this Agreement. By entering this Agreement, City and Contractor further desire to confirm that Contractor has agreed to fully indemnify City in connection with any claims relating to the inadvertent or intentional collection,

transportation and/or disposal of hazardous materials that may occur in connection with Contractor's performance under this Agreement.

(v). Contractor has agreed, as part of this Agreement, to provide such services as are necessary or desirable to ensure City complies with the requirements of AB 939 and California Public Resources Code § 40000, *et seq.*

(vi). City desires, among other things, to ensure adequate landfills remain available to meet the public's need for the safe handling and disposal of Solid Waste, and further desires to ensure its citizens do not incur undue costs in safely disposing of Solid Waste they generate, and has thus entered into that certain waste disposal agreement by and among various Orange County cities, including City, and the County of Orange relating to the use of County landfills for the disposal of Solid Waste collected in such cities ("County Agreement") approved by the City Council June 2, 2009. Contractor has agreed, as part of this Agreement, to provide such services and take such actions as are necessary or desirable to ensure City complies with its obligations pursuant to the County Agreement, as the same may be amended from time to time hereinafter.

B. Agreement.

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by each of the Parties, City and Contractor hereby agree as follows:

Section 1. Recitals.

The Parties acknowledge the Recitals, Part A. of this Agreement are true and correct and incorporated as though fully set forth herein.

Section 2. Definitions.

Whenever any term used in this Agreement has been defined by the California Public Resources Code, the definition of such term set forth therein shall apply unless the term is otherwise defined in this Agreement.

2.1. *AB 939* shall mean the California Integrated Waste Management Act of 1989, currently codified as California Public Resources Code § 40000, *et seq.*

2.2. *Administrative Fee* shall mean the administrative fee set forth and more fully defined in § 11.1 hereof.

2.3. *Affiliate* shall mean a business in which Contractor owns a direct or indirect ownership interest, a business (including corporations, limited and general partnerships and sole proprietorships) which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an

indirect ownership interest exists, the constructive ownership provisions of § 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply. For purposes of determining ownership under this § 2.2 and constructive or indirect ownership under § 318(a), ownership interest of less than thirty percent (30%) 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.

2.4. *Animal Waste* shall mean animal carcasses, dead animals, and/or parts or portions of dead animals. Animal Waste shall not include manure.

2.5. *Bin* shall mean a Container, including a dumpster, compactor, or any similar such device with a capacity of six (6) cubic yards or less.

2.6. *Bulky Items* shall mean Solid Waste that cannot and/or would not typically be accommodated within a Bin or a Cart including, specifically: Furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); yard wastes (including wood waste, tree branches, scrap wood, which must be bundled, with a maximum weight per bundle of fifty (50) pounds, and a maximum aggregate volume not greater than one (1) cubic yard); and clothing. For purposes of this Agreement, and notwithstanding any provision hereof to the contrary, Bulky Items shall specifically include items commonly known in the waste industry as "brown goods," "e-waste" and "universal waste" (including, without limitation all types of electronic waste, stereos, televisions, computers and monitors, cellular phones, VCRs, microwaves and other similar type of equipment and products). Bulky Items do not include car bodies, Construction and Demolition Debris or (with the exception of appliances or goods described above) items that cannot reasonably be moved with equipment of the type which, pursuant to industry standards would normally be carried in a truck collecting Bulky Items. In the event a question arises as to whether a specific item, or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties. A Bulky Item event shall be limited to twenty (20) Bulky Items.

2.7. *Cart* shall mean a plastic Container, of a size and type approved by City and Contractor, with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

2.8. *City* shall mean the City of Placentia, a Charter City and municipal corporation, situated in Orange County, California.

2.9. *City Limits* shall mean the territorial boundaries of the City together with all amendments and changes thereto, which boundaries are depicted on maps, incorporated herein by reference, that are kept on file in the office of the City Clerk of the City of Placentia, and which are from time to time amended to reflect changes.

2.10. *City Administrator* shall mean the City Administrator of the City of Placentia or his or her designee.

2.11. *Collect* or *Collection* shall mean to take physical possession of, transport, and remove Solid Waste from a premises.

2.12. *Commercial Premises* shall mean Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which hotels and motels are operated shall be deemed to be Commercial Premises.

2.13. *Container* shall mean any and all types of Solid Waste receptacles, including Carts and Bins.

2.14. *Contractor* shall mean Republic Waste Services of Southern California, a wholly owned subsidiary of Republic Services Inc., a Delaware Limited Liability Company, *dba* Placentia Disposal, the entity granted the franchise pursuant to this Agreement, or any party permitted pursuant to the terms hereof to become the successor or assignee thereof

2.15. *County Agreement* shall mean that certain waste disposal agreement entered between various Orange County cities, including specifically the City of Placentia, and the County of Orange relating to the use of County landfills for the disposal of Solid Waste collected in such cities, approved by the City Council June 2, 2009, and which is on file in the office of City's City Clerk, as the same may be amended from time to time.

2.16. *Customer* shall mean any person, firm partnership or corporation receiving Solid Waste Handling Services from Contractor within the Franchise Area.

2.17. *Dwelling Unit* shall mean one or more rooms designed for occupancy by one family as defined in § 23.04.230 of the Municipal Code.

2.18. *Effective Date* shall mean the date upon which this Agreement is finally approved, by resolution, of the City Council.

2.19. *Environmental Laws* shall mean all federal and state statutes, county and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C § 6901, *et seq.*, the Federal Clean Water Act, 33 U.S.C § 1251, *et seq.*, the Toxic Substances Control Act, 15 U.S.C § 2601, *et seq.*, the Occupational Safety and Health Act, 29 U.S.C § 651 *et seq.*, the California Hazardous Waste Control Act, California Health and Safety Code § 25100, *et seq.*, the Carpenter-Presley-Tanner Hazardous Substance Account Act, California Health and Safety Code § 25300, *et seq.*, the Porter-Cologne Water Quality Control Act, California Water Code § 13000, *et seq.*, the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code § 25249.5, *et seq.*

2.20. *Franchise Area* shall mean all Premises within the City Limits, including Premises which may be annexed and thereby added to the City Limits following the Effective Date.

2.21. *Franchise Fee* shall mean the franchise fee set forth and more fully defined in § 11.1 hereof.

2.22. *Gross Receipts* shall mean and include all monies, fees, charges, consideration, and revenue received, charged or imputed to Contractor and any Affiliate of Contractor, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor pursuant to this Agreement. Gross Receipts includes, without limitation, monthly Customer charges for Collection of Solid Waste, without subtracting Franchise Fees, fees imposed and collected pursuant to this Agreement, sums collected in connection with Temporary Services, and transportation charges. Notwithstanding anything in this § 2.21 to the contrary, for purposes of calculating Franchise Fees and Administrative Fees due to City by Contractor, Gross Receipts shall be deemed to not include any revenues from the sale of Recyclable Materials.

2.23. *Hazardous Substance* shall mean any of the following: (A) any substance 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 to the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, (ii) the Hazardous Materials Transportation Act, 49 U.S.C. § 5101, *et seq.*, (iii) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, (iv) the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, (v) California Health and Safety Code §§ 25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and (vii) California Water Code § 13050; (B) 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 laws or regulations, including any of the Environmental Laws, including, without limitation, friable asbestos, polychlorinated biphenyl's, petroleum, natural gas and synthetic fuel products, and by-products.

2.24. *Hazardous Waste* shall mean all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by California Health and Safety Code § 25110.02, §25115, and § 25117 or identified and listed as hazardous waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*

2.25. *Multi-Family Dwelling* shall mean any building or lot, including mixed use premises incorporating dwelling units and non-residential uses, including Commercial Premises, containing more than one (1) Dwelling Unit at which Contractor determines (and City agrees) the Dwelling Units must receive Solid Waste Handling Services through the use of shared Bins, where the premises is not reasonably able to store Carts or otherwise receive individualized Solid Waste Handling Service through the use of the automated Collection system utilizing Carts contemplated by this Agreement for Single Family Dwellings. Any ambiguity as

to whether a Premises qualifies for purposes of this Agreement as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Administrator whose decision shall be final.

2.26. *Municipal Code* shall mean City's Municipal Code.

2.27. *Person* shall mean any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of Orange, towns, cities, and special purpose districts.

2.28. *Premises* shall mean any land, building, and/or structure within the City Limits where Solid Waste is generated or accumulated.

2.29. *Recyclable Material* or *Recyclables* shall mean that Solid Waste materials that have been separated from the solid waste stream prior to disposal and returned for use or reuse in the form of raw materials for new, used or reconstituted products which meet quality standards necessary to be used in the marketplace and that are not land-filled. Recyclable materials can include, but are not limited to, paper, plastics, glass, metals, cardboard, organics, food waste, and construction and demolition materials.

2.30. *Residential Premises* shall mean all premises within the City upon which Dwelling Units exist. Notwithstanding any provision to the contrary herein, in the Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which hotels and motels are operated shall be deemed to be Commercial Premises

2.31. *Rolloff Box* shall mean Solid Waste Collection Containers of ten (10) yards or larger.

2.32. *Self-Hauler* shall mean any person or entity not engaged commercially in waste hauling who collects and hauls waste generated from their own residential, agricultural, commercial or industrial activities conducted solely by such person or entity and in quantities of less than five (5) tons per month.

2.33. *Self-Hauled Waste* shall mean Solid Waste generated and collected within the City and hauled by Self-Haulers.

2.34. *Single Family Dwelling* shall mean a building or lot containing one (1) Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one (1) Dwelling Unit where such Dwelling Units are determined by the City to be reasonably able to receive individualized Solid Waste Handling Service by the automated process utilizing Carts contemplated herein. Any ambiguity as to whether a Customer's Premises qualifies as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Administrator whose decision shall be final.

2.35. *Solid Waste* shall mean and include all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances,

dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid waste, and other discarded solid and semisolid waste as described in California Public Resources Code § 40191.

2.36. *Solid Waste Handling Services* shall mean the Collection, transfer, transport, recycling, processing, and disposal of Solid Waste.

2.37. *Special Wastes* shall mean wastes other than Solid Waste including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, hazardous waste, Animal Waste, explosive substances, radioactive materials, and other materials which may not be disposed of at a Class III landfill or which require special handling.

2.38. *Statutes, Ordinances and Regulations* referenced herein shall mean and include any and all City Ordinances, including the Municipal Code, County of Orange Ordinances, state and federal statutes and any and all regulations promulgated thereunder as the same currently exist or as may be amended, altered, modified, or recodified from time to time after the Effective Date.

2.39. *Temporary Service* shall mean Solid Waste Handling Services provided by Contractor on an as-needed and temporary basis to any Premises within the City in conjunction with construction, demolition, cleanup or other projects, and by use of temporarily placed Bins or Rolloff Boxes, excluding Self-Hauled waste.

2.40. *Term* shall have the meaning ascribed in § 6 of this Agreement.

2.41. *Uncontrollable Circumstances* shall mean any event beyond the reasonable control of, and unanticipated by Contractor, including any event of Force Majeure as defined herein.

Section 3. Grant of Exclusive Franchise.

3.1. Scope of Franchise. Except as hereinafter expressly set forth, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive contract, right, and privilege to Collect, transport, Recycle and dispose of all Solid Waste generated or accumulated within the Franchise Area. The exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and adopted during the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law or future enactments limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

3.2. Matters Excluded from Scope of Franchise. Notwithstanding any other provision set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude the Collection, transportation, recycling, equipment rental and/or disposal of:

(A). Any Solid Waste otherwise within the scope of this Agreement Which is transported by a Self-Hauler as that term is defined herein;

(B). The sale or donation of Recyclable Materials by the person or entity that generated such Recyclable Materials ("Generator") to any person or entity other than Contractor; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material to any person or entity other than Contractor, the fact that the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;

(C). Any Solid Waste otherwise within the scope of this Agreement which is Collected or transported to a disposal or recycling facility by City employees in the course and scope of their employment with City;

(D). The Collection, transportation, or disposal of Hazardous Waste; biohazardous waste; untreated medical waste; infectious waste; Animal Waste; used cooking fats, oils, grease and similar waste; or other materials which do not constitute Solid Waste;

(E). The Collection, transportation, and disposal of Construction and Demolition Waste by a contractor, handyman, repairman, or other similar service provider, using its own equipment, as an incidental part of the services provided to its Customers, rather than as a hauling service, provided that such waste is not Collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(F). The Collection, transportation, and disposal of green waste and related Solid Waste by a gardener, or landscaper, as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service provided that such Solid Waste is not collected or transported by a third party hired for the primary purpose of Collecting and transporting said materials;

(G). Solid Waste Handling Services provided by any Person having a legal right to continue doing so, pursuant to California Public Resources Code § 49520, *et. seq.*, or otherwise, as long as and to the extent such legal right continues to exist; except that to the degree any territory in which Contractor has a franchise granted by another governmental entity is annexed into City during the Term, Contractor agrees the provisions of this Agreement shall apply to such territory and further acknowledges that this Agreement constitutes any notice required by the Public Resources Code in connection therewith.

Section 4. Enforcement of Exclusivity.

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall reasonably assist Contractor in its efforts to enforce the exclusivity hereof. In addition, City shall adopt such ordinances or other regulations as it deems to be necessary or desirable to protect the exclusive rights granted herein. City shall have the right, but not the obligation, to enforce the exclusivity hereof, including by institution of appropriate legal proceedings, and/or to request that Contractor do so. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. Contractor shall reimburse City for City's reasonable legal costs, or other extraordinary expenses (such as expert consultants, independent auditors, and private investigators) incurred in connection with City's actions to either enforce the exclusivity hereof, or to assist Contractor in doing so.

Section 5. Acceptance; Waiver

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives Contractor's right to change the terms of this Agreement under Federal, State, or local law, or administrative regulation. Contractor waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under California Public Resources Code § 49520. Additionally, by and upon the execution of this Agreement, Contractor agrees to the termination of the Original Agreement as of the Effective Date, agrees to waive any and all rights under the Original Agreement, and agrees to release and hold the City harmless from any of the City's obligations thereunder (excepting, however, the right to compensation for services provided at the rates approved by City as of the Effective Date); provided, however, nothing contained in this provision is intended to or shall relieve Contractor from any obligation existing under the Original Agreement pertaining to insurance, indemnification, or other legal obligations to City or Customers (as opposed to obligations to provide service pursuant to the terms thereof), or from any obligation set forth in the Original Agreement which are called out as surviving the termination thereof, and all such obligations, including specifically those indemnification obligations relating to Environmental Laws, general liability, and AB 939 shall survive the termination of the Original Agreement. Nothing contained in this provision is intended to modify or rescind any provision in the Settlement Agreement and Release executed by City and Contractor on or about April 6, 2010 ("Settlement Agreement") or to relieve Contractor or the City from the effect of any agreements or releases contained therein, including the City's obligation to credit Contractor's Administrative fee payment obligations hereunder with the unused balance of the \$700,000 advanced Administrative Fee payment made by Contractor to City pursuant to that Settlement Agreement.

Section 6. Term

The term of this Agreement (the "Term") shall consist of and include two consecutive time periods: (A) an Initial Franchise Period of five (5) years commencing on the Effective Date

and continuing until the fifth anniversary of the Effective Date; and (B) following immediately thereafter by a twenty (20) year Evergreen Period. The twenty (20) year Evergreen Period shall be extended by one (1) year on each succeeding anniversary of this Agreement (starting with the sixth anniversary of the Effective Date), unless after expiration of the Initial Franchise Period said annual automatic renewal provision is cancelled by either party in its sole discretion by notifying the other party in writing no later than 5:00 p.m. of the day that is 120 days before the anniversary date. Thus, this Agreement shall have a total initial Term of twenty five (25) years, which shall convert to a twenty (20) year evergreen term at the end of the five year extension period. If notice of cancellation of the Evergreen Period is given by either party after the expiration of the Initial Franchise Period, the Term of this Agreement shall then be a 19 year Term which will commence to run on the anniversary that occurs 120 days following the giving of such notice. This Term shall apply to all provisions under this Agreement unless this Agreement is terminated sooner pursuant to § 18 hereof, or otherwise, in which case certain provisions of this Agreement shall survive termination as provided in §§ 5 and 27.

Section 7. Conditions to Effectiveness of Agreement

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement, and a condition of Contractor's continued right to the benefits conveyed herein:

7.1. Accuracy of Representations. All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true, and correct on and as of the Effective Date of this Agreement.

7.2. Absence of Litigation. There shall be no litigation pending in any court challenging the award of this Franchise to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance.

7.3. Furnishing of Insurance, Bond, Letter of Credit and Corporate Guarantee. Contractor shall have furnished evidence of the insurance and Surety required by §§ 14 and 15 hereof, and shall comply with all ongoing requirements relating thereto, and shall provide the Corporate Guarantee required by § 30.9 hereof.

7.4. Effectiveness of City Council Action. City's Resolution approving this Agreement shall have become effective pursuant to California law.

Section 8. Solid Waste Handling Services Provided by Contractor.

8.1. General.

8.1.1. Equipment. Contractor shall furnish all labor, supervision, materials, supplies, and equipment necessary to provide for all services required by the terms of this Agreement.

8.1.2. Performance Standards. Contractor shall perform Solid Waste Handling Services as required hereunder in a workmanlike manner consistent with good housekeeping standards and all relevant provisions of the Municipal Code. Contractor's equipment shall be maintained so as to both: (A) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible be "watertight" and "leak-proof" and, (B) at all times comply with the provisions of all laws and regulations, including any applicable National Pollution Discharge Elimination Systems ("NPDES") permit, and Chapter 16.20 of the Municipal Code, with regard to leaking of materials. Contractor shall immediately clean up any spills from its equipment of which it becomes or made aware.

8.1.3. Noise and Disruption. Contractor shall perform Solid Waste Handling Services as required hereunder in such a manner as to minimize noise and other disruptive impacts including, without limitation, those upon traffic. Contractor shall use its best efforts to coordinate its Collection schedules such that street sweeping on any given street shall occur the business day following Collection of Solid Waste by Contractor.

8.1.4. Collection Times. Contractor shall not commence Solid Waste Handling Services for Customers at Commercial Premises until 6:00 am. and for Customers at Residential Premises until 7:00 am., nor shall such activities occur after 9:00 p.m. for Customers at Commercial Premises and 7:00 p.m. for Customers at Residential Premises. The City Administrator may require Contractor to comply with time frames applicable to Residential Premises in connection with Solid Waste Handling Services for Customers at Commercial Premises whose premises are in close proximity to Residential Premises. Solid Waste Handling Services at Residential Premises shall not occur on Saturdays; excepting Temporary Bin Services and Collection occurring on Saturdays following such holidays as may be approved by the City Administrator. No Solid Waste Handling Services shall occur on Sundays at Residential Premises, except in exceptional circumstances for which specific written approval is given by the City Administrator. Solid Waste Handling Services may occur at Commercial Premises on Sundays; provided, however, no such service shall occur on Sundays in connection with any Premises at which the City Administrator determines such service would be contrary to the public interest.

8.1.5. Collection Schedule. Contractor shall establish Collection routes and a Collection schedule which shall be approved by the City Administrator such that Customers at all Residential and Commercial Premises within the City will have not less than one (1) established Collection day each week. Contractor shall provide notice to each Customer of its established Collection day(s), and shall provide at least one week's notice to Customers of any change in their established Collection day(s). Notwithstanding any provision herein to the contrary, should any established Collection date fall on a legal holiday, or on any other holiday which is observed by either a landfill or other lawful disposal site to which Solid Waste is taken for disposal, or a recycling facility to which Recyclable Material is taken, Contractor shall provide for Collection one (1) day later during the pick-up week, and the regular pick-up

schedule shall be resumed the following week. A pick-up week shall be defined as Monday through Saturday. Contractor may not change its established Collection schedules without obtaining the prior written consent of the City Administrator.

8.1.6. Commingling of Routes. Contractor shall not during its Collection process commingle Solid Waste Collected hereunder with Solid Waste Collected in any other City, and is specifically prohibited from combining Collection loads related to services provided pursuant to this Agreement with Collection loads for other jurisdictions which Contractor services without obtaining the prior written consent of the City Administrator.

8.1.7. Replacement of Containers. Contractor shall, whenever possible, place Carts in the street gutter, adjacent to the curb upon completing Collection. Contractor shall replace all Bins in the location upon the property of each Customer utilizing Bins within such areas, buildings or structures designated for storage of Bins, and shall secure gates, doors, and/or enclosures when applicable.

8.1.8. Contractor's Containers.

(A). Contractor's Containers shall meet the minimum standards set forth on the attached Exhibit "B".

(B). Contractor shall be responsible to maintain and replace, as necessary, all of its Containers.

(C). All Contractor's Containers shall be maintained by Contractor in good repair, and any question as to the meaning of this standard shall be resolved by the City Administrator.

(D). All Carts shall be maintained by Contractor in a watertight condition, as shall all Bins which are used primarily for the disposal of Solid Waste containing liquids.

(E). Contractor shall replace any damaged Carts at no charge to Customers, provided, however, Contractor shall be entitled to charge Customers for the replacement of any Cart that has been damaged by a Customer, ordinary wear and tear excepted, with such charges being subject to City's approval.

(F). Contractor shall replace any lost or stolen Carts within three business days, at no cost to Customers. Contractor shall only be obligated to replace a lost or stolen Cart for a Customer two (2) times during the Term hereof. For each replacement of a lost or stolen Cart thereafter, Contractor shall be entitled to charge Customers provided the rates charged by Contractor shall be subject to City Administrator approval.

(G). Contractor shall, at Customer's request, annually refurbish, replace, and steam clean as necessary all Bins and Rolloff Boxes at no charge to Customers; provided, however, City may require the steam cleaning or replacement of Bins utilized at restaurants, bars and grocery stores/markets more frequently if it determines such action is

needed to protect public health and safety. Additional steam cleaning shall be provided to any Customers who request it at a charge not to exceed the maximum rate set forth in Exhibit "A" hereto, or alternatively Contractor shall provide a replacement Bin/Rolloff Box to Customers at no charge.

(H). Contractor shall remove any graffiti that appears on its Containers within twenty- four (24) hours after becoming aware of said graffiti or notice from City.

(I). All Bins and Rolloff Boxes shall be kept freshly painted in a uniform fashion and shall be identified with Contractor's name and phone number in letters not less than three inches high on its exterior so as to be visible when the Container is placed for use.

(J). At a Customer's request, Contractor shall provide Bins with locking lids and locks and may charge rates to Customers for locking Bins which do not exceed the maximum rates set forth on Exhibit "A".

8.1.9. Missed Pick-ups. In case of a missed pick-up called in by a Customer, Contractor shall Collect Solid Waste and Recyclable Material from such Customer no later than the next day of the pick-up week following the date of the call. Records of the addresses of all missed pick-ups shall be maintained by Contractor, and shall be reported to City upon request. If Contractor demonstrates to the satisfaction of the City Administrator a pattern of ongoing late "set-outs" by a given Customer, missed pick-ups resulting from late set-outs by that Customer shall not be counted as missed pick-ups in evaluating Contractor's performance hereunder. The Customer service phone system required by § 10.8.2 hereof is intended, among other things, to serve as a "hotline" for Customers to call in the event Solid Waste placed for Collection is not Collected by Contractor and to facilitate having such Solid Waste Collected as soon as reasonably possible, and in no event later than as required by the provisions hereof.

8.1.10. Record of Non-collection. As more fully set forth herein, Contractor shall Collect all Solid Waste placed for Collection by Customers inside Carts or Bins, excepting materials that are specifically called out herein (such as hazardous materials.) Whenever Contractor determines not to Collect any Solid Waste deposited for Collection, Contractor shall leave a tag at least 2" by 6" in size, indicating the reason for Contractor's refusal to do so. This information may be either handwritten or left by means of a check system (*i.e.*, checking off boxes on a preprinted form). The tag shall provide Contractor's business name and its local telephone number and shall be securely fastened to the Container or the article refused. Contractor shall maintain a record of all such taggings at its place of business. Such record shall contain the date of such notice, street address, reason for non- collection, and a summary of any communications between Contractor and the Customer involved. Such information shall be retained for three (3) years so that it may be conveniently inspected by representatives of City upon request.

8.2. Residential Solid Waste Handling Service.

8.2.1. Single Family Dwellings — Automated Collection. Contractor shall provide each Customer at a Single Family Dwelling with one (1) ninety- six (96) gallon Cart designated for the Collection of mixed Solid Waste (a Refuse Cart). Contractor shall Collect all Solid Waste placed out for Collection by each Customer at a Single Family Dwelling not less than once per week using an automated Collection system at rates that do not exceed the maximum rates set forth in Exhibit "A." Any Customer requesting a smaller Refuse Cart(s) shall be provided with a sixty-four (64) gallon Refuse Cart by Contractor instead of the standard ninety-six (96) gallon Cart noted above. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one or more additional Refuse Carts, and shall Collect all Solid Waste placed for Collection in such additional Refuse Carts at rates that do not exceed the maximum rates set forth in Exhibit "A." Wherever feasible, Customers shall be directed by Contractor to place Carts for Collection either in the street gutter, against the curb, in front of their Premises, or adjacent to their Premises in the alley or easement in the rear of their Premises. If a Customer and Contractor cannot agree upon a Collection location, or if the City Administrator determines the selected location may cause safety or other concerns, City shall make the final determination of the Collection location.

8.2.2. Walk-Out Service. Contractor shall provide eligible Customers with "walk-out service" as set forth in this paragraph at no additional charge. This service shall require Contractor to use its own forces to bring a Customer's Carts from a Customer's backyard, side yard, or such other location at which the Customer's Containers are regularly stored, to Contractor's Collection Vehicle; and, after disposal of the contents thereof, returning said Containers to the location where they are regularly stored. To be eligible for this service a Customer shall have a DMV issued disabled person placard/license plates, or be a person who provides a physician's letter as described herein. Each Customer desiring walk-out service shall cause a letter to be submitted to Contractor from a physician confirming the Customer is unable to move his/her Carts to the curb, and that to the best of his/her knowledge there is no other capable person living in the Customer's household to provide this service. Contractor may require each eligible Customer to provide a new letter from a physician on an annual basis in order to maintain eligibility for walk-out service. In order to receive walk-out service, a Customer will be required to sign a standardized agreement, the terms of which shall be subject to approval by the City Administrator, that authorizes entry onto the Customer's property and holds Contractor harmless for any liability (including, specifically, liability related to pets escaping) associated with Contractor providing the service. Any dispute regarding a Customer's eligibility for walk-out service shall be resolved by the City Administrator.

8.2.3. Recycling Program for Single Family Dwelling Using Carts. Contractor shall provide each Customer at a Single Family Dwelling with one (1) ninety- six (96) gallon Cart designated for the Collection of Recyclables (a Recycling Cart) at no additional charge. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one or more additional Recycling Carts at no additional charge. Any Customer requesting smaller Recycling Cart(s) shall be provided with a sixty-four (64) gallon Recycling Cart(s) by Contractor instead of the standard ninety-six (96) gallon Cart noted above. Contractor shall Collect Recyclable Material placed in Recycling Carts for Collection from each Customer at a Single Family Dwelling on the same day as such Customer's Refuse Cart is

Collected, utilizing an automated Collection process. Customers shall be directed to place Recycling Carts in the same location for Collection as Refuse Carts.

8.2.4. Curbside Grease Collection Program. If required by the City, applicable sanitation district, or other regulatory agency, Contractor shall design a program for the collection of grease, fat, oils and similar waste generated from household cooking activities (the "Curbside Grease Collection Program") that the City Administrator finds satisfactory and approves, in writing. Contractor shall be responsible to ensure the Curbside Grease Collection Program complies with all applicable laws and regulations. At such time as a Curbside Grease Collection Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit "A" in order to compensate Contractor for implementing such a program.

8.2.5. Green Waste Program for Single Family Dwellings Using Carts. Contractor shall provide all Customers at Single Family Dwellings to whom it provides Refuse Carts, with a ninety-six (96) gallon Cart for Collection of commingled green waste (a "Green Waste Cart") at no additional charge. Upon request from any Customer at a Single Family Dwelling, Contractor shall provide such Customer with one or more additional Green Waste Carts at rates that do not exceed the maximum rates set forth in Exhibit "A". Any Customer requesting a smaller Green Waste Cart(s) shall be provided with a sixty-four (64) gallon Green Waste Cart(s) by Contractor instead of the standard ninety-six (96) gallon Cart noted above. Contractor shall Collect green waste placed in Green Waste Carts for Collection from each Customer on the same day as such Customer's Refuse Cart is Collected, using an automated collection process. Customers shall be directed to place Green Waste Carts in the same location for Collection as Refuse Carts.

8.2.7. Use of Bins for Multi-Family Dwelling Customers. Contractor shall supply Multi-Family Dwellings with Bins meeting the minimum standards set forth in Exhibit "B" for Solid Waste Handling Services ("Refuse Bins"). Contractor shall provide the number of Bins reasonably needed for Solid Waste Collection at each Premises at which Multi-Family Dwellings exist bearing in mind both the number of Dwellings and space limitations. Contractor shall endeavor to provide at least one (1) Refuse Bin for every six (6) Dwelling Units located at each Multi-Family Dwelling. The size of Refuse Bins utilized, and the frequency of their Collection, shall be mutually agreed upon by Contractor and its Customers, except that Collection shall occur not less than one (1) time per week and City shall have the right to impose minimum requirements for Bin sizes and more frequent Collection should it determine such action is needed to protect public health, safety and welfare. In the event of any dispute as to the adequacy of the number of Bins at any given Multi-Family Dwelling, the City Administrator shall approve the number of Refuse Bins used at such location. Contractor may charge the Person who owns or manages each Multi-Family Dwelling rates for each Bin required at the Premises that do not exceed the maximum rates set forth in Exhibit "A." In the event extra pickups are required at a Multi-Family Dwelling in any given month, Contractor may charge the Person who manages or owns the Multi-Family Dwelling for such pickups an amount that does not exceed the maximum rate for "extra dumps" as set forth in the attached Exhibit "A."

8.2.8. Residential Bulky Item Service. Contractor shall provide Bulky Item Collection services to residents living at all Single Family Dwellings or Multi-Family Dwellings with Automated Collection Service on an on-call basis. The Bulky Item Collection service set forth in this Section shall only apply with respect to Bulky Items generated at the Dwelling Unit at which the Customer calling for service resides. The first three (3) such collections in any calendar year shall be provided by the Contractor without charge to the Customer. Contractor may charge for additional such collections in excess of three (3) within the calendar year not to exceed the maximum rate as set forth in the attached Exhibit "A." In order to receive such service, residents shall provide Contractor with notice by phone of the number and type of Bulky Items to be collected. Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service and Contractor shall Collect and dispose of all Bulky Items placed for Collection pursuant to the terms hereof. Contractor shall produce, keep current, and provide public information specifically outlining its Bulky Item Collection service, which shall specifically include the annual publication and distribution of a brochure describing this service to residents of all Single Family Dwellings in City. Should an apartment manager, property manager, or the owner of a Multi-Family Dwelling contact Contractor for Bulky Item Collection, Contractor shall provide Bulky Item Collection Service in the same manner as to other Commercial Premises as set forth in § 8.3.3 below.

8.2.9. Bulky Item Diversion. Bulky Items Collected pursuant to this Agreement may not be landfilled until the following hierarchy of diversion efforts has been followed by Contractor:

- (A). Reuse as is (if energy efficient);
- (B). Disassemble for reuse or Recycling;
- (C). Recycle or other means of diversion; and
- (D). Disposal.

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items unless the compaction mechanism is adjusted as to not compact the Bulky Items.

8.2.10. Proper Handling of Bulky Items. Contractor shall properly handle all materials required to be collected as Bulky Items, including specifically items that require special handling pursuant to the Environmental Laws, such as materials that constitute "universal waste" and/or "e-waste"

8.2.11. Residential Sharps Collection Program. If requested to do so by City, or otherwise required by law, Contractor shall design a program for the collection of used needles ("Sharps Collection Program") for approval by the City Administrator. Contractor shall be responsible to ensure the Sharps Collection Program complies with all applicable laws and regulations. It is anticipated that any Sharps Collection Program at a minimum will allow for Customers to mail used needles to a specific collection location, in specialized packaging provided by Contractor, and/or deliver used needles to a location in or near City designated by Contractor. At such time as a Sharps Collection Program is implemented, Contractor and City

shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit "A" in order to compensate Contractor for implementing such a program.

8.2.12. Residential Non-Controlled Medication Collection Program.

If requested to do so by City, or otherwise required by law, Contractor shall design and present a program to City for the collection of unused non-controlled medicines ("Non-Controlled Medication Collection Program") for approval by the City Administrator. Contractor shall be responsible to ensure any Non-Controlled Medication Collection Program complies with all applicable laws and regulations. It is anticipated that any Non-Controlled Medication Collection Program at a minimum will allow for Customers to mail unused medication (excepting controlled substances) to a specific Collection location, in specialized packaging provided by Contractor, and/or deliver unused medication (excepting controlled substances) to a location in or near City designated by Contractor. At such time as a Non-Controlled Medication Collection Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit "A" in order to compensate Contractor for implementing such a program.

8.2.13. Additional Services. As part of the consideration for entering this Agreement, Contractor shall provide the following additional services:

(A). Monitoring and Cleaning of Bin Enclosures. Contractor shall work with the City Administrator in identifying and resolving continuing problems with overflowing Bins or Bin enclosures, and/or other unsanitary conditions caused by Customers. Contractor shall clean out any overflowing Bins or Bin enclosures within City within twenty-four (24) hours of notification by City. Contractor may bill Customers for any such services with rates for said services shall be in keeping with the approved schedule shown as Exhibit "A."

(B). Public Service Calls From City Departments. Contractor shall, free of charge, respond to calls from City's Maintenance and Code Enforcement Divisions and from its Police Department, to provide Containers and dispose of Bulky Items and other Solid Waste as a result of illegal or unauthorized dumping, or other Code enforcement matters, occurring, within City. Contractor agrees that if requested to provide such services in connection with abatement activities for which reimbursement is sought from the property owner by City through abatement liens or otherwise, Contractor will provide billing information sufficient for City to include it in its liens, and Contractor will be paid at such time as the abatement lien is paid, or reimbursement is otherwise obtained by City from the property owner. Upon receipt of a call for service from City made pursuant to this Section, Contractor shall advise City within four (4) hours as to when service will be provided, and unless otherwise agreed by City service shall be provided within 72 hours.

8.2.14. Recycling Assistance for Social Events. Contractor shall assist persons designated by City (whether City employees or private individuals) who are responsible to coordinate special events or events in large venues (such as concerts or sporting events) in the implementation of recycling programs. Contractor shall be responsible to prepare and submit to City a "waste reduction and recycling plan" prior to such events, and within 30 days following

each such event shall submit a "waste characterization report" listing the amount of each material collected for disposal and recycling at the event.

8.2.15. Holiday Trees. For a two (2) week period (dates to be determined by the City Administrator) following December 25th of each year, Contractor shall, free of charge, pick up all Holiday Trees placed out for Collection by Customers. Such trees shall not be commingled with other Solid Waste and shall be delivered to a proper facility for processing, rather than disposal, as required by the provisions hereof.

8.2.16. Handling of Electronic Waste. Contractor shall Collect electronic waste, or "e-waste," and/or universal waste, from any Customer in the manner set forth herein, but shall handle and dispose of such materials in accordance with all applicable laws and regulations. Such Collection shall be considered as a Bulky Item Collection and shall be considered as one (1) occurrence in the number of Collections within a calendar year for Single Family and Multi-Family Dwellings with Automated Collection Services.

8.2.17. Complementary Mulch/Compost Program. At least once each calendar year during the Term, Contractor shall coordinate and conduct a complementary mulch/compost giveaway on a date and at a location approved by the City Administrator. The complementary mulch/compost giveaway event(s) shall be provided at no cost to residents. Contractor shall provide all event related public education materials and supplies.

8.3. Commercial Solid Waste Handling Services.

8.3.1. Commercial Bins and Rolloff Boxes. Contractor shall provide all Customers at Commercial Premises ("Commercial Customers") with at least one Bin and/or Rolloff Box for Collection of mixed Solid Waste, and shall Collect all Solid Waste placed therein for Collection not less than once per week, at rates that do not exceed the maximum rates set forth in Exhibit "A." Contractor shall provide additional Containers to Customers and shall provide additional Collections upon request, or as may be required by the Municipal Code, health and safety requirements, or by the City Administrator, and may charge rates for such services which do not exceed the maximum rates set forth in Exhibit "A." Bins and Rolloff Boxes shall be Collected by Contractor from the location upon each Customer's property designated for their storage, and replaced to that location with gates and/or doors secured, as applicable, after Collection is completed, unless different arrangements are agreed upon by the Customer and Contractor. Contractor shall service Customer owned Bins and Rolloff Boxes that are connected to a Customer's owned packer unit at rates not to exceed the maximum rates as set forth in Exhibit "A."

8.3.2. Commercial Carts. As an alternative to the requirements of § 8.3.1, Contractor shall offer Collection in Refuse Carts to Commercial Customers that do not have space for, or do not generate enough waste to require the use of, Bins for Collection. Rates for Customers receiving such service shall not exceed the maximum rates set forth on Exhibit "A." If Contractor and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or

other concerns, the City Administrator shall make the final determination as to whether Collection by means of a Refuse Cart may occur.

8.3.3. Commercial Bulky Item Service. Contractor shall provide unlimited Bulky Item Collection services to Commercial and Multi-Family Dwelling Customers with Bin Collection on an on-call basis. Contractor may charge rates for such services which shall not exceed the maximum rates set forth in the attached Exhibit "A." Bulky Item Collection service calls shall be responded to within a reasonable time but not longer than seven (7) days from the date of the Customer's call for service. Contractor shall produce, keep current, and provide public information specifically outlining the Bulky Item pick-up service. Bulky Items Collected pursuant to this Section are subject to the diversion and handling requirements set forth in §§ 8.2.9 and 8.2.10.

8.3.4. Other Collection Programs As May Be Required by Law. In the event any Federal, State, or Local law or regulation, imposes upon City or Contractor a requirement for the implementation of any source separated program for the Collection of any waste material (whether or not meeting the definition of Solid Waste hereunder) not already covered by this Agreement, whether Commercial or Residential in nature, Contractor shall design and present a program to City to comply with such requirement, which program shall require approval by the City Administrator. At such time any such program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit "A" in order to compensate Contractor for implementing such a program.

8.4. Temporary Services. Contractor shall provide Temporary Services on an on call basis to any Customer requesting such service pursuant to the following conditions:

(A). Bins and Rolloff Boxes utilized in connection with Temporary Services shall meet the minimum standards set forth herein.

(B). No charges excepting rates not exceeding the maximum rates set forth in the attached Exhibit "A" related to Bins (whether Bins for clean-up projects or Bins for construction projects — which are designated as Temporary Bins and Temporary Construction Bins respectively on Exhibit "A," and which may have differing maximum rates as reflected on Exhibit "A") or Rolloff Boxes utilized in connection with Temporary Services shall be imposed by Contractor, unless approved in accordance with § 8.7 (Special Services).

(C). Temporarily placed three (3) cubic yard Bins may be used for small cleanup type projects at Residential Premises; provided, however, Bins used for such purposes shall not remain at the same address for a period that exceeds four (4) consecutive weeks without City Administrator approval, in writing. Bins used for Temporary Service shall not remain in any public rights-of-way without City Administrator approval, in writing. Bins placed in City's rights-of-way shall be subject to such requirements as may be imposed by City, including repair to the right-of-way, if required, and, at a minimum shall, be equipped with reflectors, reflective tape, reflective paint, or other reflective devices which, to the satisfaction of the City Administrator, make such Bins reasonably visible to vehicle traffic at night.

(D). In the event required by City ordinance regulating the recycling and disposal of construction and demolition waste, Contractor agrees to comply with all provisions of any such ordinance, and to provide consulting/audit services for construction contractors in City as may be impacted or required to comply with any such ordinance at no charge (such as assistance in preparing plans for the collection, recycling and disposal of construction and demolition waste). Moreover, during the pendency of any such ordinance, Contractor shall be responsible to provide any administrative support as may be requested by City which is necessary to implement such ordinance.

(E). If requested to do so by City, or otherwise required by law, Contractor shall design a program for the collection of used motor oil or similar substances ("Used Motor Oil Collection Program") which shall be submitted for approval by the City Administrator. Contractor shall be responsible to ensure the Used Motor Oil Collection Program complies with all applicable laws and regulations. At such time as a Used Motor Oil Collection Program is implemented, Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth on Exhibit "A" in order to compensate Contractor for implementing such a program.

(F). In addition to complying with any related requirements that may exist in any ordinance which may be in effect in City regulating construction and demolition waste, including specific diversion levels that may be required by any such ordinance, Contractor shall make all reasonable efforts to recycle all construction and demolition waste it Collects, especially to the degree such loads contain clean inert materials; towards this end, Contractor shall make available to Customers involved in construction separate containers within which to Collect different types of marketable materials, such as dirt, steel, concrete and wood. Rates for said services shall be in keeping with the approved schedule as shown in Exhibit "A."

8.5. Recycling Obligations.

8.5.1. Minimum Requirements for Recyclable Materials and Green Waste. Contractor shall utilize a truck dedicated for the purpose of Collecting green waste from Customers, such that green waste which has been separated prior to Collection, once Collected, is not commingled with other Solid Waste (including Recyclable Material). Similarly, Contractor shall utilize a truck dedicated for the purpose of Collecting Recyclable Materials, except as otherwise approved, in writing, by the City Administrator such that Recyclable Material Collected in Recycling Carts, once Collected, is not commingled with other Solid Waste (including green waste). All material Collected by Contractor in Recycling Carts pursuant to this Agreement shall be delivered to a properly permitted facility for recycling and reuse purposes. All green waste separated prior to Collection and thereafter Collected by Contractor pursuant to this Agreement (including, specifically, materials Collected in Green Waste Carts or Customer provided Containers as well as Holiday Trees) shall be delivered to a properly permitted facility for recycling, mulching, composting, or alternative uses for which diversion credit is provided as may be approved by Cal Recycle.

8.5.2. Extent of Applicable Franchise Rights. Nothing in this Agreement shall be construed as giving Contractor the right to Collect Recyclable Material which has not been discarded and placed for Collection by Contractor in the location designated for that purpose.

8.5.3. AB 939 Obligations, Guarantee and Indemnification.

8.5.3.1. Warranties and Representations. Contractor warrants and represents that it is aware of and familiar with City's Source Reduction and Recycling Element ("SRRE"), that it is familiar with City's waste stream, and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939, as amended, as of the effective date of this Agreement, and that it shall do so without imposing any costs or fees other than those set forth on the attached Exhibit "A."

8.5.3.2. Mutual Cooperation. City and Contractor shall reasonably cooperate in good faith with all efforts by each other to meet City's diversion and other compliance requirements imposed by AB 939. In this regard, City's obligations shall include, without limitation, making such petitions and applications as may be reasonably requested by Contractor for time extensions in meeting diversion goals, or other exceptions from the terms of AB 939.

8.5.3.3. Waste Reduction and Program Implementation. Contractor shall implement the programs identified in the SRRE and Household Hazardous Wastes Element ("HHWE") of City's General Plan immediately upon the Effective Date hereof, and will implement any programs required by any amendments or modifications thereto. In meeting this obligation Contractor shall be mindful of and comply with all requirements of the County Agreement, including, specifically, and without limitation, the requirements thereof generally relating to (A) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (B) the disposal of residual Solid Waste that remains after recycling processes have been completed. Contractor shall provide City with monthly, quarterly and annual written reports in a form adequate to meet City's AB 939 related filing and reporting requirements to Cal Recycle and to the County of Orange throughout the Term of this Agreement wherein City's performance, under the above programs, shall be set forth in detail. Contractor shall be responsible to prepare, or assist City with the preparation of, all reports and other information as may be required by any agency, including specifically, the State of California, in order to comply with AB 939. Contractor shall reimburse City for any costs City incurs in appearing before Cal Recycle and/or the County of Orange in relation thereto.

8.5.3.4. Guarantee and Indemnification. Contractor warrants and guaranties that it will carry out its obligations' under this Agreement such that: (i) both it and City will at all times be in compliance with the requirements of AB 939, and (ii) City will meet or exceed the diversion requirements (including, without limitation, amounts of Solids Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939,

as amended, as of the effective date of this Agreement. In this regard Contractor agrees that it will, in addition to any other requirement contained herein, at its sole cost and expense:

(A). To the extent legally permitted, defend, with counsel approved by City, indemnify, and hold harmless City and City's officials, employees, and agents from and against all fines and/or penalties and other liabilities which may be imposed by Cal Recycle, formally the California Integrated Waste Management Board or any other regulatory agency if: (1) Contractor fails or refuses to timely provide information relating to its operations which is required pursuant to this Agreement or AB 939 and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner; or (2) the source reduction and recycling goals, diversion goals, program implementation requirements, or any other requirements of AB 939 are not met with respect to the waste stream Collected under this Agreement;

(B). Assist City in responding to inquires from Cal Recycle;

(C) Assist City in preparing for, and participating in, Cal Recycle's biannual review of City's SRRE pursuant to California Public Resources Code § 41825;

(D). Assist City in applying for any extension, including under California Public Resources Code § 41820, if so directed by City;

(E). Assist City in any hearing conducted by Cal Recycle relating to City's compliance with AB 939;

(F). Assist City with the development of and implement a public awareness and education program that is consistent with the City's SRRE and Household Hazardous Waste Element, as well as any related requirements of AB 939;

(G). Provide City with recycling, source reduction, and other AB 939 related technical assistance;

(H). Defend, with counsel acceptable to City, City and City's officials, employees, and agents against the imposition of fines and/or penalties, or any other liabilities, issued by Cal Recycle pursuant to AB 939;

(I). Be responsible for and pay, any fees, penalties or other costs imposed against the City by Cal Recycle, and indemnify and hold harmless City from and against any fines, penalties, or other liabilities, levied against it for violation of AB 939's diversion requirements, or violation of any other provision of AB 939, arising from or in any way related to Contractor's performance of its obligations under this Agreement.

8.5.4. 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 to satisfy the requirements of AB 939.

8.5.5. Implementation of Additional Diversion Services. In the event City does not meet the current diversion, goal of 50% imposed by AB 939 with respect to all waste generated in City, City may direct Contractor to perform additional services (including the implementation of new diversion programs) or modify the manner in which it performs existing services, and Contractor agrees to do so at no additional charge. Pilot programs and innovative services which may entail new Collection methods, and use of new or alternative waste processing and disposal technologies are included among the kinds of changes which City may direct.

8.6. Special Services. Contractor may provide special pickup procedures or services in addition to the services described herein for Customers who request or require such services at reasonable rates established by Contractor, which rates are subject to approval by the City Administrator. Contractor shall notify the City Administrator of any such services prior to such time as they are provided in order to allow the City an opportunity to conduct necessary inspections, review the proposed rate, and impose appropriate regulations.

Section 9. Minimum Standards for Contractor's Solid Waste Handling Service Collection Vehicles

9.1. General. Contractor shall provide vehicles for the Collection of Solid Waste ("Collection Vehicles") that are sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Contractor is expressly obligated to provide such Collection Vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection Vehicle used to respond to complaints and emergencies. Within 30 days of their receipt by Contractor, Contractor shall provide City with copies of all reports relating to its California Highway Patrol's Bi-annual Inspection of Terminal ("BIT Inspection Reports").

9.2. Air Quality/Fuel Requirements. Contractor's Collection Vehicles shall comply with all rules and regulations of the South Coast Air Quality Management District, the Air Resource Board, and any other regulatory body that may be in effect during the term of this Agreement, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Agreement. Contractor's Collection Vehicles shall meet or exceed such air quality standards as may be adopted by the forgoing regulatory bodies during the Term.

9.3. Specific Requirements. Each Collection Vehicle utilized by Contractor in the performance of this Agreement shall meet the following minimum standards:

(A). Each Collection Vehicle shall be registered with the California Department of Motor Vehicles.

(B). Each Collection Vehicle shall be inspected regularly by Contractor to ensure it meets the requirements of the California Vehicle Code and the California Highway Patrol. Contractor shall provide copies of its BIT Inspection Report(s) to City within 30 days of receipt of such reports and shall make all records related to its vehicles, including Contractor's maintenance records, available to City upon request by the City Administrator.

(C). Each Collection Vehicle shall be equipped with devices capable of covering every open section of the vehicle in which Solid Waste may be placed and, while operating upon the public rights-of-way, shall be covered so as to prevent any Solid Waste from falling or being blown or otherwise dislodged from the vehicle.

(D). Each Collection Vehicle shall be continuously maintained so as to both: (1) meet the highest industry standards with regards to efforts to prevent liquid from leaking and to the degree possible ensure each Collection Vehicle is "watertight" and "leak-proof" and, (2) at all times comply with the provisions of all laws and regulations including the Vehicle Code, any applicable NPDES permit and Chapter 16.20 of the Municipal Code, with regard to materials leaking from Collection Vehicles. Contractor shall be responsible to promptly clean any spillage or Solid Waste that leaks or otherwise escapes the vehicle.

(E). Each Collection Vehicle shall be painted periodically, which shall include all necessary body work, and shall be regularly cleaned, so that such vehicles do not become unsightly, as determined by the City Administrator. Each vehicle shall be painted with Contractor's colors and identifying information as required herein.

(F). Contractor's name, local or toll free telephone number, and a vehicle number shall be visibly printed or painted in letters not less than five (5) inches in height on both sides of each Collection Vehicle.

(G). Each Collection Vehicle shall be maintained in a clean and sanitary condition both inside and out and shall be washed at least once every seven (7) calendar days and steam cleaned on a regular basis.

(H). Each Collection Vehicle shall carry a broom, shovel, and operable fire extinguisher, and shall be equipped with a communication device sufficient to allow the driver to communicate directly with Contractor's dispatcher and/or main office.

(I). Each Collection Vehicle shall be kept in good repair and working order, and shall be equipped with appropriate safety equipment, including any new safety related technologies that become standard in the waste industry. Contractor shall keep a sufficient

supply of replacement parts and equipment on hand to ensure adequate vehicle maintenance and timely and continuous performance of the services contemplated by this Agreement.

(J). Contractor shall inspect each Collection Vehicle daily to ensure that all equipment is operating properly. Collection Vehicles which are not operating properly shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection Vehicles in accordance with the manufacturer's specifications and schedule. Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall keep accurate records of all Collection Vehicle maintenance and repair, recorded according to date and mileage, including signed verifications that repairs and maintenance has been properly performed, and shall make such records available to City upon request.

(K). No Collection Vehicle shall be utilized if it is leaking brake, hydraulic, or other fluids, and Contractor shall clean up any leaks or spills from their vehicles per the NPDES permit in effect at the time and Chapter 16.20 of the Municipal Code. No fluids shall be washed into storm drains at any time. All NPDES cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such cleanup efforts.

(L). Upon request, Contractor shall furnish City a written inventory of all equipment, including Collection Vehicles, used in providing service pursuant to this Agreement. This inventory shall list all equipment by manufacturer, ID number, date of acquisition, type and capacity.

(M). Contractor shall utilize Collection Vehicles of a size, weight, nature, and type so as to not be unreasonably intrusive on the community with respect to noise, emissions, maneuverability, safety, and other factors and to avoid or minimize pavement damage and wear and tear of the street or adjacent properties.

(N). Contractor shall not load Collection Vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local laws or regulations. Noise levels of equipment used for Collection shall not exceed ninety decibels (90 db) when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground.

9.4. Costs of Operation and Damages. Contractor shall be responsible for any costs incurred in connection with ensuring all Collection Vehicles comply with all applicable laws and regulations, including without limitation any such laws and regulations that may now exist or hereinafter be adopted relating to noise, fuels, emission standards, or weight limits.

9.5. City Inspection. City may cause or require any Collection Vehicle used in performance of this Agreement to be inspected and tested at any time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the provisions of this Agreement.

9.6. Correction of Defects and Removal of Vehicles from Use within City.

Contractor agrees to immediately remove from service, and replace or repair, to the City's satisfaction, any Collection Vehicle which City determines to be of unsightly appearance, unsafe, unsanitary, leaking, out of compliance with any law or regulation or this Agreement, or otherwise in an unsatisfactory operating condition; and any such vehicle shall not be returned to service until the City Administrator gives his/her written consent for its return.

Section 10. Contractor's Solid Waste Handling Service Personnel

10.1. Uniforms. Each of Contractor's Collection employees shall wear a clean uniform bearing the Contractor's name.

10.2. Identification of Employees. Contractor shall provide identification badges, cards or similar devices, for all of its employees, and all authorized subcontractors, who may make personal contact with residents of the City. City may require Contractor to notify Customers yearly of the form of said identification.

10.3. Employee List. Contractor shall provide a list of current employees and authorized subcontractors to City upon request.

10.4. Driver's License. Each employee operating a vehicle as part of his or her duties shall, at all times, carry a valid operator's license for the type of vehicle he or she is operating. All employees who may have contact with Customers in the course of performing their duties shall be able to speak English.

10.5. Screening of Field Employees. All Contractor employees working in the field (*i.e.*, drivers of Collection Vehicles and employees engaged in Collection at Customer Premises) shall be subjected to a background check, at the expense of Contractor, prior to any employee being allowed to begin work or the commencement of work under this Agreement. Contractor shall make available a list of all employees upon request of the City Administrator. Said list shall confirm that each employee has been verified and is legal to work in the United States of America. Any employee reasonably determined by the City Administrator to be unacceptable by City shall not be permitted to work under this Agreement.

10.6. Discontinued Use of Unsatisfactory Employees. No employee shall continue to have any involvement whatsoever with regard to any work in anyway relating to or arising from this Agreement if City gives notice to Contractor that such employee is determined by City to be discourteous, disorderly, or otherwise objectionable (provided the term "otherwise objectionable" shall not permit City to "ban" an employee for reasons that violate public policy; and, further, City shall give a reason for requesting the "ban" of any employee from engaging in work related to this Agreement).

10.7. Training and Legal Compliance. Contractor shall provide operating and safety training that meets minimum OSHA standards for all personnel, and shall comply with all laws and regulations applicable to its employees and personnel.

10.8. Customer Service.

10.8.1. Local Office; Local Participation. Contractor maintains an office located at 1131 North Blue Gum Street, in Anaheim, California. No change in this location shall occur without City's approval if such change would result in Contractor not having an office within 25 miles of City's City Hall. Said office shall be open at a minimum, from 8:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 p.m. Saturday for telephone Customer service only, holidays excepted. At least one responsible and qualified representative of Contractor shall be present and available during all times that an office is required to be open as noted above ("Office Hours"), for personal communication with the public.

10.8.2. Telephone Customer Service Requirements.

(A). Contractor shall maintain a toll free telephone number that rings at an office within North Orange County at all times during Office Hours. Both English and Spanish speaking personnel will be available during Office Hours to assist Customers with telephonic inquiries. Contractor shall have the ability (through the use of outside resources or otherwise) to communicate with Customers who only speak a language other than English to ensure their inquiries, questions, complaints and other matters are dealt with in a reasonably timely fashion. All such personnel shall be polite and responsive, and shall be sufficiently knowledgeable, and have the authority to respond and/or advise Customers seeking assistance. Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. Contractor shall provide City with a 24-hour emergency number to a live person, not voice-mail.

(B). Contractor shall make reasonable attempts to answer all phone calls within five (5) rings. If a call has been placed on hold for three (3) minutes, the caller will either be switched to a message center which shall be responsible to obtain the caller's address and phone number, or a Customer service representative will obtain the Customer's address and a number at which the call can be returned. Contractor shall make at least three (3) attempts within the next twenty-four (24) hour period to return the call, with the first such attempt not more than one (1) hour after the caller leaves the message. If Contractor is unsuccessful in contacting the Customer after following this procedure, if possible Contractor shall send a letter to the caller indicating its efforts.

(C). Contractor shall record Customer complaints regarding Customer service personnel in accordance with § 10.8.3. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties relating to services performed under this Agreement.

10.8.3. Complaint Documentation.

(A). All service complaints shall be directed to Contractor. Contractor shall log all complaints received by telephone and said log shall include the date and time the complaint was received, the name, address and telephone number of the caller, a

description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint.

(B). All written Customer complaints and inquiries shall be date-stamped when received and shall be initially responded to within one (1) business day (Monday through Friday) of receipt. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

(C). Daily logs of complaints shall be retained for a minimum of twenty-four (24) months and shall be available to City at all times upon request.

(D). All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints. Contractor shall provide to City on a quarterly and annual basis, a complaint log, in a form approved by the City, that includes all of the complaints logged pursuant to this Section, the complainant and the resolution.

10.8.4. Resolution of Customer Complaints.

(A). Disputes between Contractor 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.

(B). Should Contractor and Customers not be able to establish a mutually acceptable fee to be charged for special services as set forth in § 8.7, the matter shall be dealt with pursuant to this § 10.8.4, be determined by the City, and the City's decision shall be final.

(C). Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Contractor. Nothing in this Section is intended to affect the remedies of third parties against Contractor.

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

10.9. Education and Public Awareness.

10.9.1. General.

(A). Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939. Accordingly, Contractor agrees to exploit opportunities to expand

public and Customer knowledge concerning needs and methods to reduce, reuse and recycle Solid Waste and to cooperate fully with City in this regard.

(B). Contractor shall maintain a program of providing information relevant to needs and methods to reduce, reuse and recycle Solid Waste, and City upon request from Contractor may include such information along with bills provided to Customers. All public education materials shall be approved in advance by City. Contractor shall keep a record of all promotional and public education materials utilized, and shall provide quarterly reports summarizing its public outreach and education efforts.

(C). Upon request by City, Contractor shall conduct school assemblies and promote recycling through presentations and educational materials to the Chamber of Commerce, homeowners associations, construction contractors and other civic groups. Contractor shall also provide articles on recycling for local newsletters.

10.9.2. On-going Education Requirements.

(A). In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in both English and Spanish languages, and all written materials shall be approved by City in advance of distribution, and shall bear the City seal, unless otherwise approved by the City:

(B). Annual Notices. Not less than once each year during the Term of this Agreement, Contractor shall prepare and distribute to each Customer a brochure providing relevant information about Contractor's services, including, at a minimum: information regarding access to and use of available services; Collection schedules; holiday Collection schedules; Contractor's Customer service numbers; procedures to begin and terminate services; and information promoting and explaining available programs, such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, the availability of Household Hazardous Waste and e-waste Collection, and the proper handling and disposal of such wastes.

(C). How-To Brochure. Contractor will prepare and distribute a brochure packet to new Customers when they start service. This packet will contain updated information on how to use the Contractor-provided Carts, when and how to place Solid Waste for Collection, and who to contact with service or Billing questions.

(D). Contractor Representative. Contractor shall retain on its staff an individual who shall as part of his/her job function routinely visit civic groups, schools assemblies, and homeowner's associations, to promote and explain the Recycling and other programs that Contractor offers, and participates in demonstrations and civic events.

(E). Web Site Page. Contractor shall dedicate one (1) page of its web site to City services, which shall include at least the following information: a listing of contact names and numbers for Customer Service; information on Bulky Item Collection;

Collection schedules, including holiday schedules; and the procedures to begin and terminate services. Contractor shall assist the City in establishing a link to this web page from the City's web site.

Section 11. Contractor's Consideration.

In addition to any other consideration set forth herein, as part of its consideration for entering this Agreement, and for the exclusive franchise, right and privilege to provide Solid Waste Handling Services within City as specified herein Contractor shall provide the following:

11.1. Franchise Fee. Contractor shall pay to City, a franchise fee equal to fifteen percent (15%) of Contractor's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement ("Franchise Fee"). In addition thereto, Contractor shall pay to City an administrative fee equal to five percent (5%) of Contractor's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement ("Administrative Fee"). "Gross Receipts" shall be calculated upon Contractor's gross revenue. Except with respect to Gross Receipts collected from Customers by City on behalf of Contractor, said Franchise Fee and Administrative Fee shall be paid to City monthly on or before the twentieth (20th) day of each month. Should any such due date fall on a weekend, holiday or any day on which the City's business offices are closed, payment shall be due on the first day thereafter in which the City's business offices are open. The total amount of each such payment shall be equal to twenty percent (20%) of Contractor's Gross Receipts in the calendar month preceding the date payment was due (excluding amounts collected from Customers by the City on behalf of Contractor). The Franchise Fee and the Administrative Fee due hereunder shall apply to Gross Receipts of Contractor collected after the expiration of the Term hereof relating to Contractor's performance during the Term hereof. The Franchise Fee and Administrative Fee shall be accompanied by a statement, certified by Contractor, attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City. The Franchise Fee and Administrative Fee due in connection with amounts that are collected from Customers by City on behalf of Contractor shall be deducted by City prior to City forwarding funds it receives for payment of Solid Waste Handling Services to Contractor.

11.2. Services at City Facilities. Contractor shall provide Collection services at all Premises owned and/or operated by the City, at no cost to City, for routine Solid Waste Collection generated from such City Facilities and shall provide Containers for such service as City deems appropriate for each of its various Premises (*i.e.*, Carts, Bins or Rolloff Boxes). Such services shall be provided for all existing City facilities, as they may be expanded from time to time, as well as all new or additional facilities acquired/constructed during the Term hereof. Contractor shall carry out its obligations pursuant to this provision in a manner, and to a degree, approved by the City Administrator. Contractor shall not be responsible for the Collection of Solid Waste generated from these or delivered to City Facilities by vendors or sub-contractors of the City. Sources of City waste stream and agreed-upon locations are set forth in Exhibit "C."

11.3. Annual Contribution to Community Programs. As further consideration for the rights granted to Contractor herein, Contractor shall make a payment of Fifteen Thousand (\$15,000.00) Dollars to City each year during the Term hereof for City to use for community

programs of any nature as it deems appropriate (such as the 'Placentia Community Foundation"). Such payments shall be due on or before July 1 of each year, with the first payment due on or before July 1, 2011, and payments shall thereafter be due on or before July 1 of each succeeding year.

11.4. Recycling Revenue. City and Contractor agree that, in addition to any other consideration to be paid by Contractor to City, including Franchise Fees and Administrative Fees, City shall receive one-half (1/2) of all gross revenue received by Contractor attributable to the sale or other disposition of Recyclable Materials or Recyclables. City and Contractor further agree that the City's share of gross revenues attributable to the sale or other disposition of Recyclable Materials or Recyclables shall be applied as a credit towards the monthly Residential Service Fee charged by the Contractor. As of the Effective Date of this Agreement, Contractor has credited all Residential Single Family Dwellings One Dollar and Thirty Eight Cents (\$1.38) in the monthly Residential Service Fee, such that the Residential Rates in Exhibit "A" reflect this credit (*i.e.*, are net of this credit). The credit has been established based on historical data relating to the net revenue (net of brokerage and other commissions, processing costs, transportation costs and sales tax) from the sale of Recyclable Material collected from Single Family Dwellings in the City, and is equal to fifty percent (50%) of the anticipated net revenue from the sale of Recyclable Materials from the City's Single Family Dwellings. Thus, the intent of this provision is that Single Family Residents and Contractor share equally in the net revenues from the sale of Residential Recyclable Materials. For the purposes of establishing the anticipated annual net income from the sale of such Recyclable Materials as of the Effective Date, the total net revenue was estimated to be \$31,257.00 per month and \$375,084.00 per year (11,325 SFD units X \$1.38 = \$31,257.00 X 12 = \$375,084.00). During the Term hereof, the Baseline Recycling Revenue shall be recalculated annually, utilizing an April 1 through March 31 time line, and accompanied by a statement, certified by Contractor, attesting to the accuracy of the amount determined to the Baseline Recycling Revenue amount, and setting forth the basis for Contractor's calculation in a manner acceptable to City. In the event that gross revenue received by Contractor attributable to the sale or other disposition of Recyclable Materials or Recyclables exceeds the Baseline Recycling Revenue calculated herein, Contractor shall remit to City the excess revenue in the form of a check payable to City not later than June 30 of each calendar year. If the gross revenue does not exceed the Baseline Recycling Revenue set for that year, Contractor may request an extraordinary rate adjustment in accordance with the provisions of § 24.7.

Section 12. Charge for Late Payments.

In the event Contractor fails to timely make any of the payments provided for in this Agreement (whether reimbursements, Franchise Fees, payments of funds collected in connection with billing services, or otherwise), Contractor shall pay to City, as additional consideration, a sum of money equal to two percent (2%) of the amount past due. This amount is required in order to defray those additional expenses and costs incurred by City by reason of the delinquent payment including, but not limited to, the cost of administering, accounting for, and collecting said delinquent payment and the cost to City of postponing services and projects necessitated by the delay in receiving the revenue. In addition, any amounts not paid to City by

Contractor within sixty (60) days of the due date shall be subject to interest in the amount of ten percent (10%) per annum, calculated on a daily basis for each day such sums remain past due.

Section 13. Contractor's Billing Services and Systems.

13.1. Billing — Use of County of Orange Tax Roll Billing. Each Customer at a Residential Premises receiving Solid Waste Handling Services via use of a Refuse Cart will be billed by the City on behalf of Contractor for such services through the County of Orange Tax Roll Billing. City will collect payments from the County of Orange, on behalf of Contractor, deduct applicable Franchise Fees and Administrative Fees, as well as such other amounts (if any) owed to City pursuant to this Agreement, and thereafter remit to Contractor the balance (net to contractor) for all Residential Premises. Contractor shall provide a monthly invoice indicating all units that are serviced within the City. City shall remit to Contractor on a monthly basis Contractor's monthly cost per unit as provided in Exhibit "A" for all units billed through the County Tax Roll system. Said payment to Contractor shall be paid to Contractor within thirty (30) days of receipt of invoice. Notwithstanding the foregoing, City and Contractor may agree, in writing, to a payment frequency regarding said invoices on a quarterly or other basis. If, for any reason, billing for a Customer at a Single Family Dwelling can not be provided by City as contemplated by the parties herein, such Customer services (such as additional carts or Single Family Dwellings becoming occupied after information is submitted to the County of Orange) shall be billed by Contractor in the same manner as other Customers as provided in Exhibit "A." Contractor shall assist the City in the preparation of the required information for the County of Orange to place the Residential Premises Billing on the County of Orange Tax Roll Billing system. Contractor shall provide to City an annual reconciliation of customer accounts which addresses total parcel numbers in the billing data base and actual customers served at said parcels. Contractor shall further provide monthly invoice tracking real time service level to said parcels and customers.

13.2. Direct Billing by Contractor. In connection with any Customer not billed on behalf of Contractor by City in connection with the County Tax Roll system for services provided hereunder, Contractor shall provide itemized bills for Solid Waste Handling Services, distinctly showing charges for all classifications of services, including charges for late payments. Contractor acknowledges that it, and not Customers, is to pay a Franchise Fee to City as consideration for this Agreement. Accordingly, Contractor's bills shall not include separate itemization of a "franchise fee," or other similar designation. Billings shall be made monthly for Commercial Customers and may occur quarterly for Customers at Dwellings or as may be authorized, in writing, by the City Administrator. Customers may be billed in advance of, or subsequent to services being provided at the option of Contractor. Premises ordering service after the first of the month or canceling service prior to the end of the month shall be charged on a prorated per-pickup basis.

13.3. Delinquent Accounts. Contractor may discontinue service to any Customer as set forth in this Section. Customers who have not remitted required payments within thirty (30) days after the date of billing shall be notified on forms approved by the City Administrator. Said forms shall contain a statement that services may be discontinued fifteen (15) days from the date of notice if payment is not made before that time. If payment is not

made by the expiration of said fifteen (15) day period, Contractor may discontinue service forty-eight (48) hours thereafter. Contractor shall resume Solid Waste Handling Services on the next regularly scheduled Collection day for any Customer whose service is discontinued upon receipt of payment of delinquent fees and any related service restart charges, or at such sooner time as directed to do so by City. Any delinquent fees or service charges to be imposed in connection with delinquent accounts shall be set by Contractor and be subject to City Administrator approval. A deposit equal to the maximum rate for one (1) month's service as set forth on Exhibit "A," as such rates may be amended from time to time, may be required of accounts which have been discontinued for non-payment prior to reinstating service at such accounts.

13.4. Minimum Requirements for Billing Statements. In addition to any other pertinent data, billing statements mailed by Contractor shall be printed to contain the following information:

(A). A "statement date" indicating the date the bill is generated and mailed.

(B). A notice to Customers that payments are due upon receipt of the bill, an advisement that the Customer's account will become delinquent if payment is not received by the twentieth (20th) day following the statement date, an advisement of the date and time by which payments must be received in order to avoid delinquent fees (*i.e.*, 4:00 p.m. on the forty-fifth (45th) day following the statement date), and a notification of the amount of fees that will be imposed and the potential for service interruptions if payments are not received by the specified date and time,

(C). An advisement to Customers that payment can be made in the following manner:

(1). by mailing payment to Contractor at such address as Contractor may designate; or

(2). by automatic withdrawal from a checking account; or

(3). by major credit card on-line (*i.e.*, via the Internet) (to be included at such time as this payment option becomes available, which shall occur on or before July 1, 2011).

(D). An advisement that inquiries relating to Solid Waste Handling Services should be directed to Contractor, including an address, phone number and Internet site, for such inquiries.

13.5. Billing System.

13.5.1. Computerization of Account Information. Contractor shall provide and maintain, at Contractor's expense, computer equipment sufficient to operate pertinent computer programs and otherwise provide the services required by this Section. Contractor shall create, at its own expense, computer programs sufficient to operate a

computerized billing system, permanently maintain all account records and otherwise meet the requirements of this Section.

13.5.2. Minimum Computer Programming Requirements. In addition to any other requirements set forth herein, the programs created by Contractor to operate and maintain the billing system shall at a minimum be able to perform the following functions:

(A). create a permanent record of any adjustment to a Customer's account;

(B). work in connection with a backup system such that all Customer account data and records is protected from a computer failure and permanently preserved on not less than a daily basis;

(C). allow Customers to make payments on-line (*i.e.*, via the Internet) by a major credit card (provided this service shall become available on or before July 1, 2011).

13.5.3. Billing Inquiries. All billing inquiries shall be entered into the computerized billing system. Contractor's computer programs shall keep a permanent record of all billing inquiries and all adjustments to Customer bills resulting therefrom.

13.5.4. Distribution of Public Information. If requested to do so by City and at no charge to City, Contractor shall insert any printed material prepared by City into its billing statements for delivery to its Customers. City shall not request Contractor to include any printed material in its bills if such material is of a size, shape, or weight that would increase Contractor's postage costs or if such material does not fit into the envelopes utilized by Contractor to mail bills. Any printed material to be included in the bills to be mailed by Contractor shall be provided to Contractor within a reasonable time in advance of Contractor's scheduled mailing date, such that the insertion of such material into billing envelopes does not delay the scheduled mailing date of billing.

13.6. Payment, Accounting Systems.

13.6.1. Collection, Processing of payments, Accounting and Deposit of Funds. All payments received by Contractor shall be appropriately credited to Customer accounts, deposited in a bank account and accounted for in a businesslike manner utilizing generally accepted accounting principles. To facilitate audits and record keeping Contractor shall make all withdrawals from its bank accounts by check, ACH debit/credit or wire, regardless of whether the withdrawal is to provide funds to City, Contractor, or any permissible subcontractor of Contractor.

13.6.2. Allocation of Funds. With respect to payments received from each Customer, unless a Customer specifically directs a different allocation, funds shall be allocated first to outstanding charges for Solid Waste Handling Services, then to any related delinquency fees or other administrative charges, up to the amount of any outstanding balance.

Any overpayment shall be credited to future bills in the same sequence, or returned to the Customer, as appropriate

13.6.3. City Billing Limited. City has agreed to continue the established practice of allowing the costs charged by Contractor to its Residential Customers for Solid Waste Handling Services to be collected in connection with the County of Orange Tax Roll Billing system. In the event City determines this system of billing is no longer necessary or desirable, or because of any challenge to the legality of the practice (such as a challenge under Article XIII or any other provision of the California Constitution), then Contractor shall be responsible for billing all Customers for services provided hereunder, and all such billings shall comply with the provisions hereof related to billing. Contractor and City shall meet and confer in good faith to determine a fair and reasonable adjustment to the maximum rates set forth in Exhibit "A" in order to compensate Contractor for implementing such a billing system, including potential bad debit and collection costs associated with non-payment of Contractor services.

Section 14. Faithful Performance.

(A). Contemporaneously with execution of this Agreement, as security for Contractor's faithful performance of all obligations of this Agreement, Contractor shall provide a surety mechanism ("Surety"), as more fully defined below, in the amount of One Million (\$1,000,000.00) Dollars. The Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. Any letter of credit utilized to satisfy some or all of the Surety requirement shall be drawn upon a financial institution with an office within one hundred (100) miles of City, and otherwise in a form acceptable to City's City Attorney. The performance bond, if any, shall be issued by a duly authorized corporate surety company authorized to do business in California, and in a form acceptable to City's City Attorney. The cost of the Surety shall be the sole responsibility of Contractor. The Surety shall be released within thirty (30) days after both (i) the expiration of the Term of this Agreement; and (ii) Contractor's satisfactory performance of all obligations hereunder.

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

(C). Notwithstanding any provision hereof to the contrary, thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, either the letter of credit or performance bond comprising the Surety may be utilized by City for purposes including, but not limited to:

(1). Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City.

(2). Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor.

(D). City may draw upon the entire letter of credit (if any) utilized to meet Contractor's obligations pertaining to the Surety, and convert it to a cash deposit, if Contractor fails to cause the letter of credit to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration.

Section 15. Insurance Coverage.

Contractor shall procure and maintain, during the entire Term of this Agreement, the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder shall in no way limit Contractor's various defense and indemnification obligations, or any other obligations as set forth herein.

15.1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(A). The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

(B). The most recent editions of Insurance Services Office form number CA 00 01 1001 covering Automobile Liability, code I "any auto."

(C). Workers' Compensation insurance as required by the Labor Code of the State of California and Employer's Liability insurance.

15.2. Minimum Limits of Insurance. Contractor shall maintain in force for the term of this Agreement limits no less than:

(A). Comprehensive General Liability: Ten Million (\$10,000,000.00) Dollars limit aggregate and Ten Million (\$10,000,000.00) Dollars limit per occurrence for bodily injury, personal injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

(B). Automobile Liability: Ten Million (\$10,000,000.00) Dollars limit aggregate and Ten Million (\$10,000,000.00) Dollars limit per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

(C). Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of One Million (\$1,000,000.00) per occurrence.

15.3. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. If, in the reasonable opinion of the City, Contractor does not have sufficient financial resources to protect the City from exposure with respect to any deductibles or self-insured retentions Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

15.4. Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions;

15.4.1. General Liability and Automobile Liability Coverages.

(A). City, as well as its elected and appointed officials, officers, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; Premises owned, leased or used by Contractor; or vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, or its elected and appointed officials, officers, employees, agents or volunteers.

(B). Contractor's insurance coverage shall be primary insurance as respects City, as well as its elected and appointed officials, officers, employees, agents or volunteers. Any insurance or self insurance maintained by City, or its elected and appointed officials, officers, employees, agents or volunteers shall be excess of Contractor'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 City, or its elected and appointed officials, officers, employees, agents or volunteers.

(D). Coverage shall state that Contractor'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.

15.4.2. Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against City, as well as its elected and appointed officials, officers, employees, agents or volunteers, for losses arising from work performed by Contractor for City.

15.4.3. 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 City.

15.5. 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, unless otherwise approved by the City Manager.

15.6. Verification of Coverage. Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Article. 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 City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

15.7. Loss or Reduction in Insurance. In the event that Contractor fails to retain or maintain insurance with the scope and amounts of coverage required hereunder, City shall have the right, but not the obligation to either terminate this Agreement, or obtain insurance coverage as required herein on behalf of Contractor and utilize funds from the Surety defined in Section 14 to pay the cost of providing such coverage.

Section 16. Assignment, Subletting, and Transfer; Requirements and Limitations.

16.1. General. Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "Assignment") to any other Person without the prior approval by the City Council of the City. Any such Assignment made without the approval by the City Council of the City shall be void and the attempted Assignment shall constitute a material breach of this Agreement.

16.2. Assignment. For purposes of this § 16, the term "Assignment" shall include, but not be limited to: (A) A sale, exchange or other transfer of substantially all of the Contractor's assets dedicated to service under this Agreement to a third party; (B) a sale, exchange or other transfer of any membership interest of Contractor to a third party; (C) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (D) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (E) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

16.3. Nature of Agreement - Personal to Contractor. Contractor acknowledges that this Agreement involves rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (A) Contractor's experience, skill and reputation for conducting its Solid Waste Handling

Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (B) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in selecting Contractor to perform the services to be rendered by Contractor under this Agreement.

16.4 Procedure for Consideration of Assignment. If Contractor requests City's consideration of and consent to an Assignment, the City Council of City may deny, approve or conditionally approve such request in its sole and absolute discretion. Under no circumstances shall City be obliged to consider any proposed Assignment if Contractor is in default at any time during the period of consideration. Should the City consent to any Assignment request, such Assignment shall not take effect until all conditions relating to the City's approval have been met. Any request for an Assignment shall be made in a manner to be prescribed by the City Administrator, and no request by Contractor for consent to an Assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the Assignment if approved, made reasonable assurances that it will meet) the following requirements:

(A). Contractor shall undertake to pay City its reasonable direct and indirect expenses, including administrative, investigative, consulting, and attorney's fees and 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 (collectively the "Administrative Assignment Fee"). An advance, non-refundable, payment of Fifty Thousand (\$50,000.00) Dollars toward the Administrative Assignment Fee shall be paid to City prior to City's consideration of any Assignment request, although 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 or not City consents to the Assignment.

(B). If requested to do so, Contractor shall furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) operating years.

(C). Contractor shall furnish City with satisfactory proof: (1) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (2) 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 laws, including the Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (3) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (4) 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, (5) of any other

information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

(D). The proposed assignee shall execute an agreement assuming all of Contractor's rights and liabilities under this Agreement. If all provisions of the procedures for consideration of assignment are met by Contractor, the City, in good faith, shall not unreasonably withhold consent to Assignment of this Agreement.

Section 17. Review of Services and Performance.

17.1. Time for Performance Review. Contractor's performance shall be subject to review as follows:

(A). When justified by a serious complaint concerning the performance of the Contract or by Contractor's breach of the terms hereof;

(B). Annually, unless waived by the City Administrator; and

(C). During every fourth year of performance unless mutually waived by the City Administrator and Contractor.

The determination of whether a Performance Review shall be made is in the sole and absolute discretion of the City Administrator for such cause as is deemed appropriate, except in the case of § 17.1.(C). Although a Performance Review may be conducted prior to the determination that an Event of Default has occurred in accordance with § 18.2 or the termination of this Agreement under § 18.13, the City may proceed under the Agreement's provisions for breach without conducting such Performance Review Hearing. Moreover, at any point during the Performance Review process, the City Administrator may elect to terminate the review by giving Contractor notice in writing of said election.

17.2. Components of Performance Review. Performance Review may consist of any or all of the following elements:

(A). **Technical Review.** A review of solid waste collection, source reduction, recycling or disposal services; the application of new technologies; Contractor's recordkeeping; the effect of legislative and regulatory changes; and compliance with the terms of this Agreement.

(B). **Service Review.** A review of the services provided; the feasibility of providing new services; customer complaints and Contractor's response to customer complaints; recordkeeping; survey of customer satisfaction as discussed below; all to assure that services are provided of superior quality and effectiveness and in full compliance with the terms of this Agreement.

(C). **Rate Survey.** A survey of rates for residential and commercial service for solid waste collection, recycling and disposal for cities and unincorporated territory in

North Orange County area, with the goal of assuring that the rates charged by Contractor to customers are competitive with or less than rates established in other jurisdictions, taking into consideration the level of services and programs provided in each jurisdiction and costs of disposal and other costs, fees and surcharges not within Contractor's reasonable control.

(D). Legal Review. A review of Contractor's performance to assure that it is in full compliance with the provisions of this Agreement and all other applicable provisions of law, and to assure that Contractor continues to be in compliance with all representations and warranties and the provisions of § 9.

(E). Performance Satisfaction Survey. A survey to determine Customer satisfaction with current collection services and Customer Service provided by Contractor. Contractor will create and conduct the survey at Contractor's expense. If desired by City, City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Performance Review Hearing. The survey shall be distributed to a sufficient number of randomly selected residential and commercial customers to achieve a confidence level of 95% with an error margin of +/- 5% of those surveyed. Contractor shall obtain City's approval of the survey content, format, and mailing list prior to its distribution. The City may require that Contractor have Customer responses to the survey returned directly to the City. The survey results shall be made available to the City thirty (30) days prior to the Performance Review Hearing. Contractor shall be entitled to a copy of said Survey.

17.3. Review Procedure. City shall notify Contractor of its intent to conduct a performance review, along with a description of the nature and the components of the review and whether or not a Performance Review Hearing will be held, at least ninety (90) days in advance thereof. Sixty (60) days after receiving such notice from City, Contractor shall submit a report to City which may contain such information as Contractor wishes to have considered, and shall contain 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 Contractor.

(C). Responses to any issues which have been raised concerning Services performed by Contractor.

(D). The reports required by this Agreement regarding Contractor complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration. In addition to the above, City may request Contractor to submit any other specific information relating to its performance.

(E). The City shall diligently conduct the performance review, and may conduct the performance review administratively, or, if in the opinion of the City Administrator

significant actions are required by Contractor affecting the Agreement, or if there would be significant public interest, the City Administrator may request review through a Performance Review Hearing held by the City Council at a public meeting. The City Administrator may cause notice of the hearing to be given by publication in a newspaper of general circulation at least ten (10) days before the hearing, and shall give Contractor ten (10) days' written notice of such hearing. Contractor may submit comments or complaints during or before the Hearing, either orally or in writing. Contractor shall be present at and participate in the Performance Review Hearing.

(F). The Performance Review Hearing may include all components of Performance Review as described herein, including obtaining new or expanded services. The City Council may use all relevant evidence produced at the Hearing and shall approve a report concerning Contractor's performance and adopt findings by Resolution. As a result of its findings following any Performance Review Hearing, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Performance Review Hearing in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of this § 17. If any breach of or noncompliance is found in Contractor's performance, the provisions of § 18 shall apply.

Section 18. City's Remedies; Default and Termination.

18.1. Failure to Perform Generally and Liquidated Damages.

(A). General. The City finds, and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Contractor of certain specific obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (1) substantial damage results to members of the public who are denied services or denied quality or reliable service; (2) 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; (3) that the services that are the subject of this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (4) the termination of this Agreement for such specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

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

representations as to its quality of service commitment in entering this Agreement with it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under this § 18, the parties agree that the liquidated damage schedule set forth on Exhibit "E" represents a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor Initial Here ___

City Initial Here ___

(C). 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.

(D). Liquidated damages will only be assessed after Contractor has been given the opportunity but failed to rectify, in a timely manner, the breach as described in this Agreement. Furthermore, prior to assessing liquidated damages, City shall give Contractor notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Contractor may review (and make copies at its own expense) all information in the possession of City relating to incident(s)/non-performance. Contractor may, within ten (10) days after receiving the notice, request a meeting with City. Contractor may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. City will provide Contractor with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of City shall be final, subject to judicial review.

(1). Amount. City may assess liquidated damages as set forth in Exhibit "E" for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

(2). Timing of Payment. Contractor shall pay any liquidated damages assessed by City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond required by the Agreement or find Contractor in default and terminate this Agreement pursuant to § 18, or both, and the amount owed as liquated damages will begin to accrue interest, at the legal interest rate, as of the eleventh day that the damages are due.

18.2. Events of Default. Each of the following shall constitute an event of default ("Event of Default") hereunder:

(A). Service Defaults:

(1). Missed Collections: Contractor fails to make at least ninety-nine percent (99%) of the gross number of scheduled solid waste collections in any Contract Year, where the Containers were properly and timely set out for collection. A Container shall be deemed timely collected if the Contractor collects said Container within twenty-four (24) hours (Sundays and holidays excepted) of telephone or other Notice thereof to Contractor of a missed pickup, subject to exceptions in § 4.

(2). Breach of Agreement: Contractor fails or refuses to perform any of its obligations hereunder after City Notifies Contractor that a specific failure or refusal has occurred which will, unless corrected, give City a right to terminate this Agreement in accordance with this § 18; and Contractor does not correct such breach within twenty (20) days of receiving City's Notice thereof; provided, however, that if such breach is not capable of cure within said twenty (20) days, Contractor shall promptly provide City Notice explaining why Contractor believes it needs additional time to effect a cure together with a schedule therefore, and shall diligently proceed to cure the breach within such schedule, whereupon City, in its reasonable discretion, may accept Contractor's schedule of cure, make a written demand that Contractor cure the default within an alternative time period set by City, or terminate this Agreement at the end of the twenty (20) day period.

(3). Failure to Comply With Law: Contractor fails to comply with Applicable Law where such failure will materially and adversely affect Contractor's performance under this Agreement, after Notice of violation thereof from an agency with jurisdiction over Contractor's operations. With respect to any such failure to comply with Law, Contractor shall be afforded an opportunity to cure as provided in § 18.2.(A).(2).

(4). Failure to Deliver Materials to Designated Facility: Contractor fails to deliver solid waste to a Disposal Facility or Recyclables to a Processing Facility, selected in accordance with § 4 on more than two (2) instances and Contractor having been afforded an opportunity to cure as provided in § 18.2.(A).(2).

18.3. Performance Assurance Defaults:

(A). Failure to Provide Performance Bond, *etc.*: Contractor fails to provide insurance, a performance bond or guaranty in accordance with Article, and following notice and an opportunity to cure as provided in § 18.2.(A).(2).

(B). Failure to Provide Assurances of Performance: Contractor fails to timely provide assurance of performances in accordance with § 17.

18.4. Monetary Payment Default:

(A). Failure to Pay Damages: Contractor fails to pay City any amount necessary to compensate City for any damages suffered by the City and caused by Contractor's intentional, reckless or negligent act or omission, within thirty (30) days following City's written statement explaining the nature of the damages and requesting payment therefor.

(B). Contractor fails to pay any other monetary amount due hereunder, other than monetary damages stated above, after Contractor has failed to timely make such payment as required by this Agreement and following Notice of Default from City and an opportunity to cure said payment default within ten (10) days of such Notice.

(C). Sale, Transfer, Assignment: Contractor sells, transfer or assigns its stock, assets and/or this Agreement without City approval required by § 16.

(D). Seizure, Attachment: Any Bin or Vehicle is seized, attached, or levied upon (other than a pre-judgment attachment) so as to substantially impair Contractor's ability to timely and fully perform Services, and said seizure or attachment cannot be released, bonded, or otherwise lifted within forty-eight (48) hours, excepting weekends and Holidays.

(E). Insolvency, Bankruptcy, Liquidation: Contractor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidation, assignee (other than as a part of a transfer of Service Assets no longer used to provide Services or backup Services), trustee (other than as security of an obligation under a deed of trust), custodian, sequestrator, or administrator (or similar official) of Contractor for any part of Contractor's operating assets or any substantial part of Contractor's property, or shall make any general assignment for the benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they become due or shall take any action in furtherance of any of the foregoing.

(F). A court having jurisdiction enters a decree or order for relief in respect of the Agreement in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, or any such court enters a decree or order or appoints a receiver, liquidator, assignee, custodian, trustee, sequestrator, or administrator (or similar official) of the Contractor or for any part of the Contractor's operating equipment or assets, or orders the conclusion or liquidation of the affairs of the Contractor.

(G). False Representations; Breach of Representations or Warranties: Contractor makes a representation or warranty herein, which is materially untrue as of the date thereof. Contractor makes a representation or fails to make a disclosure, whether within this Agreement or otherwise, to City in connection with or as a material inducement to entering into this Agreement or any future amendment hereto, which representation or failed disclosure was false or misleading in any material respect when made.

18.5. Breaches and Defaults Excused.

(A). Performance Excused. Neither Party shall be deemed in breach or default of its duties, obligations (other than a payment obligation at the time due and owing), responsibilities or commitments hereunder to the extent that such breach or default is due to an Uncontrollable Circumstance, provided such Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of such Uncontrollable Circumstance.

(B). Notice. The Party experiencing an Uncontrollable Circumstance and relying thereon shall give immediate Notice thereof to the other Party, including describing performance hereunder for which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the extent Services may be curtailed; any requests or suggestions to mitigate the adverse effects of such Uncontrollable Circumstance; or any consequent adjustment that may be required in the Service Fee. An Uncontrollable Circumstance will not be deemed to have commenced or be excused, until the date upon which the City receives written notice pursuant to this § 18.

(C). City's Rights. Notwithstanding that Contractor's failure to timely and fully provide Services due to Uncontrollable Circumstances does not constitute an Event of Default, City shall nevertheless retain the right to perform such Services itself in accordance with § 20, and following the continuance of such failure for thirty (30) days, shall have the option, in its sole discretion, to terminate the Agreement as provided in this Article.

18.6. Interest. Any sum to be paid pursuant to the terms of this Agreement not paid when due shall bear interest from and after the due date until paid at a rate equal to the legal rate of interest.

18.7. Remedies Upon Default. Upon occurrence of an Event of Default, City shall have the following rights:

(A). Termination: To terminate this Agreement or any portion of the Contractor's Service obligations and obtain damages for Contractor's breach.

(B). Suspension: To suspend the Agreement for a period not to exceed thirty (30) days.

(C). City Right to Perform Services: To utilize Contractor's equipment, Vehicles and other property necessary or useful in the collection of Solid Waste and to use such property at the expense of Contractor to collect that Solid Waste which Contractor would otherwise be obligated to collect pursuant to this Agreement pursuant to § 20, without payment for such use by City to Contractor.

(D). All Other Available Remedies:

Contractor acknowledges that City's remedy of damages for a breach hereof by Contractor may be inadequate for reasons including:

(1). The urgency of timely, continuous, and high-quality solid waste management Service hereunder, including collection, transportation, and/or transfer for disposal of putrescible wastes which constitute a threat to public health;

(2). The lengthy time period and significant investment of money and personnel (both City staff and private consultants, including engineers, procurement counsel, City peers, and elected City officials) required to request and evaluate qualifications and proposals for alternative service comparable to Service provided hereunder for the price provided hereunder, and to negotiate new agreements therefore;

(3). City's reliance on Contractor's technical solid waste management expertise;

(4). City's reliance on Contractor's established relationships with owners and/or operators of Processing Facilities, Disposal Facilities, and Recyclables brokers and purchasers; and

(5). City's obligation to repay municipal obligations, regardless whether it secures Contractor's performance hereunder.

Consequently, City shall be entitled to all available equitable remedies, including specific performance and other injunctive relief.

18.8. Remedies Not Exclusive. Each Party's rights and remedies in the event of the other Party's breach and default hereunder are not exclusive. A Party's exercise of one such remedy is not an election of remedies but shall be cumulative with any other remedies hereunder.

18.9. Waivers.

(A). City Waiver of Breach. City's waiver of any breach or Event of Default shall not be deemed to be a waiver of any other breach or Event of Default, including ones with respect to the same obligations hereunder. Any City decision not to demand liquidated damages under § 18.1.(B) shall not be deemed a waiver of any Contractor breach hereunder. City's subsequent acceptance of any damages or other money paid by Contractor, including liquidated damages, shall not be deemed to be a waiver by City of any pre-existing or concurrent breach or Event of Default.

(B). Contractor Waiver of Defenses. Contractor acknowledges that it is solely responsible for providing Services and hereby irrevocably and unconditionally waives defenses to the payment and performance of its obligations hereunder based upon failure of consideration; contract of adhesion;; commercial frustration of purpose; or the existence, non-existence, occurrence, or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Contractor with regard to any provision hereof, subject to the occurrence of an Uncontrollable Circumstance.

18.10. Jurisdiction; Venue. The Parties shall bring any lawsuits arising out of this Agreement in State of California courts, which shall have exclusive jurisdiction over such lawsuits. The Parties agree that this Agreement is made in and will be performed in Orange County and that venue of any such action shall lie in the Orange County Superior Court. The Parties further agree that the site of any other hearing or action of whatever nature or kind regarding this Agreement, shall be conducted in Orange County.

18.11. Costs. Contractor agrees to pay to the City all fees and expenses reasonably incurred by or on behalf of the City while enforcing payment or performance of Contractor's obligations hereunder if such non-payment or non-performance results in an Event of Default by Contractor.

18.12. Assurance of Performance. If Contractor is the subject of any labor unrest and appears, in the reasonable judgment of City, to be unable to regularly pay its bills as they become due; or is the subject of a civil or criminal judgment or order entered by a federal, state, regional, or local agency for violation of an environmental or tax law, and the City Manager believes in good faith that Contractor's ability to timely and fully perform Services has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from Contractor reasonable assurances of timely and full performance hereunder. If Contractor fails or refuses to provide such reasonable assurances by the date reasonably required by the City, but no less than five (5) business days, such failure or refusal shall constitute an Event of Default.

18.13. City Right to Suspend or Terminate.

(A). Termination Events. City shall have the right to terminate this Agreement in whole, or by directing Contractor to cease performing any portion or item of its Services listed in Exhibit "A," in part, in the following events:

(1). Contractor Default: The occurrence of an Event of Default.

(2). Uncontrollable Circumstances: The occurrence and continuance of an Uncontrollable Circumstance which results in the Contractor's inability to perform for more than fourteen (14) days.

(3). Non-Severable Provisions: Any clause, sentence, provision, subsection, or Section hereof or Exhibit hereto shall be ruled invalid by any court of competent jurisdiction but is not severable herefrom. The Contract Officer shall make the determination of whether a provision is non-severable. A "non-severable" provision is one without which the parties would not have entered into the Agreement.

(B). Suspension Events. City shall have the right to suspend this Agreement, in whole or in part, upon the occurrence of an Event of Default; provided such suspension is for no longer than thirty (30) days, during which period the Contractor shall have the opportunity to demonstrate to the satisfaction of the City that Contractor can once again fully perform Services, in which event City's right to suspend or terminate the Agreement shall cease

and Contractor may resume its Performance Obligations.

(C). Notice. City shall give Contractor Notice of termination, which shall be effective forty-five (45) days thereafter; provided that such termination shall be effective immediately in an Event of Default which endangers public health, welfare, or safety. City shall give Contractor Notice of the suspension, which shall be effective immediately.

(D). Suspension, Termination of a Portion of Performance Obligations: In the event the City suspends a portion of this Agreement or terminates a portion of Contractor's obligations under this Agreement, Contractor shall continue to fully perform its obligations under the remaining portions hereof which are not suspended or terminated. Contractor agrees to adjust the Service Fee in the event that costs are reduced by the suspension or termination of a portion of the Contractor's performance obligations contained herein.

18.14. Contractor's Obligations Upon Termination.

(A). Pay Outstanding Damages. Contractor shall pay City any damages accrued and payable during the then-current Contract Year or portion thereof which would have otherwise become payable. CONTRACTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. SUCH OBLIGATIONS OF CONTRACTOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

(B). Cooperation During Transition. In the event Contractor is not awarded an agreement to continue to provide Services following the expiration or earlier termination of this Agreement, Contractor shall cooperate fully with City and any subsequent contractor(s) to assure a smooth transition of Services described in this Agreement, including transfer of any Record needed to perform the Services (including computer data, files and tapes), such as complete route maps, vehicle fleet information, days of Services information, Customer service levels and Customer billing lists; provision of other reports and data required by this Agreement; and coordination with City and any subsequent contractor(s). SUCH OBLIGATIONS OF CONTRACTOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

(C). Temporary Extension of Services. If City determines to conduct a competitive bid process to provide for Solid Waste Collection Services after the expiration of this Agreement, Contractor agrees to continue to provide services hereunder on a month to month basis until the contract for such services is awarded, provided that Contractor has been permitted to fully participate in such competitive bid process and even though such contract is not awarded to Contractor. SUCH OBLIGATIONS OF CONTRACTOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

Section 19. Contractor's Remedies; Administrative Hearing.

19.1. Administrative Hearing. Should Contractor contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Administrator requesting an administrative hearing on the allegation. The hearing shall occur as soon as reasonably possible,

or on such date as mutually agreed by the parties, and shall be held before an impartial hearing officer to be determined by the City Administrator. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling and recommendations shall become final and binding if the parties so agree in writing within thirty (30) days of the date notice of the decision is given to both parties. Otherwise, the hearing officer's ruling shall have no further force or effect.

19.2. Other Remedies; Claims. Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and the above noted thirty (30) day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officer's decision.

19.3. Actions for Damages. As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by City's Charter, § 1211, and Chapter 1.16 of the Municipal Code.

Section 20. City's Additional Remedies.

In addition to any other remedies set forth herein, City shall be entitled to any or all of the following rights and remedies in the event of a breach of this Agreement by Contractor:

(A). The right to use Contractor's equipments for the purpose of Collecting, transporting, and/or disposing of Solid Waste, including Recyclable Material, for a period not to exceed six (6) months. In the case of equipment not owned by Contractor, Contractor shall assign to City, to the extent Contractor is permitted to do so under the instruments pursuant to which Contractor possesses such equipment, the right to use and possess the equipment. If City exercises its rights under this § 20, City shall pay to Contractor the reasonable rental value of the equipment for the period of City's possession thereof (although payment may, if appropriate, occur in the form of a setoff against damages otherwise owed by Contractor pursuant to the terms hereof);

(B). The right to license others to perform the services otherwise to be performed by Contractor hereunder, or to perform such services itself; and

(C). The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach of this Agreement by Contractor, City will suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to specifically enforce the provisions of this Agreement, and to enjoin the breach hereof.

Section 21. Rights of City to Perform During Emergency.

21.1. Provision of Service. Should Contractor, for any reason whatsoever, refuse or be unable to provide Solid Waste Handling Services for a period of more than seventy-two (72) hours, and if as a result thereof, Solid Waste should accumulate in City to such an

extent or in such a manner that the City Administrator finds that such accumulation endangers or menaces the public health, safety, or welfare, City shall have the right, upon twenty-four (24) hours prior written notice to Contractor, during the period of such emergency, to temporarily take possession of any or all equipment and facilities of Contractor previously used in providing Collection, transportation, and disposal of Solid Waste and provide, through its own forces or otherwise, Solid Waste Handling Services which Contractor otherwise would be obligated to provide pursuant to this Agreement. Contractor agrees that in such event it shall fully cooperate with City to affect such a transfer of possession for City's use.

21.2. Possession of Equipment. Contractor agrees that in the event of circumstances described in § 21.1 above, City may take temporary possession of and use all of said equipment and facilities without paying Contractor any rental or other charge. Upon Contractor giving City notice that it is able to resume its normal responsibilities under this Agreement, City shall either relinquish possession of all of the above mentioned property to Contractor.

21.3. Exclusions from Right to Possession of Equipment without Compensation. Specifically excluded from the circumstances in which City may possess and utilize Contractor's equipment without compensation are circumstances in which Contractor fails or refuses to provide Solid Waste Handling Services hereunder for any reason which is not a force majeure event as defined herein. In such circumstances City's right to utilize and possess Contractor's equipment shall be subject to the provisions of the above § 20.

Section 22. Privacy.

Contractor shall strictly observe and protect the privacy rights of Customers. Information identifying individual Customers or the composition or contents of a Customer's Solid Waste stream, or any of the billing information pertaining to any Customers, shall not be revealed to any person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, ordinance, or regulation of a governmental agency having jurisdiction, or upon valid authorization of the Customer. This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of waste characterization studies or waste audits which may be required by AB 939 or this Agreement. Contractor shall not market or distribute, outside the normal course of its business, mailing lists with the names and addresses of Customers. The rights afforded Customers pursuant to this § 22 shall be in addition to any other privacy right afforded Customers pursuant to federal or state law.

Section 23. Reports and Adverse Information.

The parties acknowledge that City will require reporting at various intervals by which information important to City can be compiled and analyzed. Throughout the Term the parties agree to work together to address City's needs with respect to the information to be contained in reports prepared by Contractor. The following is intended as a starting point in order to have established an objective baseline for reporting, but the frequency and content of the reports called out below may be changed by agreement of the parties; provided any such change

is approved by the City Administrator in writing. Records related to performance of this Agreement shall be maintained by Contractor in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. The format of each report shall be approved by City. In addition to submitting all reports on paper, Contractor agrees to submit all reports in an electronic format approved by City, compatible with City's software/computers at no additional charge. Monthly reports shall be submitted within twenty (20) calendar days after the end of the report month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter.

23.1 Monthly Reports. At a minimum, Contractor shall report the following to City on a monthly basis: Solid Waste Collected by Contractor for each month, sorted by type of Solid Waste in tons broken down at level acceptable to City (which at a minimum shall include: refuse, green waste, e-waste and recyclables), as well as by customer type (i.e., single family, commercial, industrial, etc.); the Facilities where all Solid Waste Collected was processed or disposed; warning notices issued for contaminated Recyclable Materials, and green waste Containers; and a narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.

23.2. Quarterly Reports. At a minimum, Contractor shall report the following to City on a quarterly basis: The information required in the monthly reports; the complaint summary for the quarter summarized by nature of complaints; copies of promotional and public education materials sent during the quarter; description of Contractor outreach activities conducted the previous quarter; and such other information or reports that the City may reasonably request or require. Contractor shall, upon demand by City, provide true and accurate copies of landfill tipping receipts and similar such documents in order to enable City to verify Contractor's quarterly reports.

23.3. Annual Reports. On or before June 30 of each year during the Term, of this Agreement and within fifteen (15) days prior to the end of the Term, Contractor shall submit a written annual report, at its sole expense, in a form approved by City, which includes, but is not limited to, the following information:

(A). A summary of the previous year's activities including, but not limited to, the number of Residential and Commercial Customers broken down on a monthly basis;

(B). A summary of the total tons of Solid Waste Collected in City in the preceding year as well as a summary of the total tonnage diverted from the State's landfill systems during that time frame;

(C). Information and reports required by City to meet its reporting obligations imposed by AB 939 and the regulations implementing AB 939, in a form and content approved by the City Administrator;

(D). A revenue statement, certified Contractor, setting forth Franchise Fees paid and the basis for the calculation thereof, including specifically a breakdown of sources

of revenue included in Gross Receipts and the amount of revenue derived from each such source comprising Gross Receipts; and

(E). A list of stockholders or other equity investors holding five percent (5%) or more of the interest in Republic Waste Services of Southern California, LLC as well as a copy of the annual report of Republic Industries, Inc., the Guarantor hereunder.

23.4. Adverse Information.

(A). Contractor shall provide City two copies of all reports and other material adversely affecting this Agreement submitted by Contractor to the United States Environmental Protection Agency, Cal Recycle, the California Regional Water Quality Control Board, and any other federal, state, regional, or local regulatory agency. Copies shall be submitted to City simultaneously with Contractor's filing of such matters with said agencies. Contractor's routine correspondence to said agencies need not be automatically submitted to City, but shall be made available to City upon written request.

(B). Contractor shall submit to City copies of all pleadings, applications, notifications, communications, and documents of any kind submitted by Contractor to, as well as copies of all decisions, correspondence, and actions by, any Federal, State, and local courts, regulatory agencies, and other government bodies relating in any manner to Contractor's performance of services pursuant to this Agreement. To the degree authorized by law, any confidential data exempt from public disclosure shall be retained in confidence by City and its authorized agents and shall not be made available for public inspection.

(C). Contractor shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

(D). All reports and records required under this or any other Section hereof shall be furnished at the sole expense of Contractor.

23.5. Failure to Report.

The refusal of Contractor to file any of the reports required, or the inclusion of any materially false or misleading statement or representation made knowingly by Contractor in such report shall be deemed a material breach of the Agreement, and shall subject Contractor to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

Section 24. Compensation.

24.1. Contractor Rates. Contractor shall provide services to Customers pursuant to this Agreement at rates it sets, charges to, and collects from Customers, which rates shall not exceed those set forth in the attached Exhibit "A," which sets out the maximum rates that may be charged by Contractor, as such maximum rates may be adjusted from time to time

pursuant to the terms hereof. The maximum rates set forth in Exhibit "A" are inclusive of all services to be provided, including transportation, disposal, and Bin costs, and no other charges shall be imposed by Contractor for such services.

24.2. Resolution of Disputes Regarding Rate Adjustments. Any dispute regarding an adjustment to the maximum rates Contractor may charge, or the computation thereof, shall be decided by the City Administrator. The rates in effect at the time such dispute is submitted to the City Administrator shall remain in effect pending resolution of such dispute. The effective date of the adjusted maximum rate following the resolution of any such dispute, whether retroactive or prospective, shall be determined by the City Administrator.

24.3. Annual Consumer Price Index Adjustments to Service Component. Commencing on July 1, 2011, the service component associated with any of the maximum rates as set forth in Exhibit "A" shall be adjusted, and such rates shall be adjusted annually thereafter on each subsequent July 1st during the Term hereof ("Adjustment Date"), by multiplying such service component by a percentage equal to the change in the Consumer Price Index ("CPI") for All Urban Consumers, not seasonally adjusted, all items index (CPIU) — Los Angeles County, Riverside County, Orange County for the twelve (12) month period ending on the date of January 31 immediately prior to the applicable Adjustment Date. At least forty-five (45) days prior to charging Customers any rate increased due to an increase in the CPI, Contractor shall obtain the City Administrator's approval to do so. The City Administrator shall approve such a request unless it is determined, based upon substantial evidence, that the requested adjustment to the maximum rate does not meet the requirements as set forth herein.

24.4. Limitations to Annual CPI Adjustments to Service Component. Notwithstanding anything to the contrary in § 24.3, above, the maximum annual adjustment occurring pursuant to § 24.3 shall be limited by the following provision: The service component of the maximum rate may not be increased in any given year by more than seven percent (7%) without regard to any higher increase which may otherwise be justified by the formula set forth in this § 24.

24.5. Disposal Component Adjustments. It is the intention of the parties that the disposal component associated with any of the maximum rates as set forth in Exhibit "A" shall be adjusted not more than annually on each Adjustment Date such that the rates reflect each Customer's pro-rata share of any increase or decrease in the actual landfill tipping fees incurred by Contractor for disposal of Solid Waste Collected pursuant to this Agreement. To arrive at an appropriate adjustment formula to satisfy this intent, the parties have agreed that the "Disposal Component Tonnage Basis," set forth in Exhibit "A," is a fair estimate of the amount of Solid Waste generated basis and ultimately disposed of by each applicable Customer and/or service type. The initial maximum rate associated with disposal component for various services set forth in Exhibit "A" which is the per ton tipping fee charged by the Orange County Landfill System effective July 1, 2010 (where, as of the Effective Date, all of City's Solid Waste must be delivered for disposal per the County Agreement.). If, prior to any Adjustment Date, a change occurs in the tipping fees charged to Contractor by the landfill to which it delivers Solid Waste Collected hereunder, the disposal component associated with any of the maximum rates set forth in Exhibit "A" shall be adjusted as of the Adjustment Date by similarly multiplying the Disposal

Component Tonnage Basis for each applicable Customer and/or service type by the per ton tipping fee then in effect. In the event an increase occurs in applicable landfill tipping fees at a time other than an annual Adjustment Rate, Contractor shall be able to adjustment to the maximum rates applicable to the Disposal Component set forth on Exhibit "A" pursuant to § 24.7 hereof.

24.6. Discretionary Adjustments. Contractor may request an adjustment to the maximum rates set forth in Exhibit "A" at reasonable times other than as set forth in § 24.5 for unusual changes in the cost of providing service under this Agreement. For each request for an adjustment to the maximum rates brought pursuant to this § 24.7, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. City shall review the Contractor's request and, in the City Council's reasonable judgment, make the final determination as to whether an adjustment to the maximum rates will be made, and, if, an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

Section 25. Identification of Contractor.

Contractor has agreed to use the name "Placentia Disposal" to identify itself to the public as the specific organization that shall provide all services under this Agreement. Unless otherwise approved in writing by City, this name shall be used for all correspondence, billing statements, directory listings, references, signs, and vehicle and Bin identification.

Section 26. City's Flow Control Option/County Agreement.

26.1. Flow Control Option. City shall have the absolute authority to chose the location for disposal of all Solid Waste (including Recyclable Material residue, green waste residue, and construction and demolition waste) Collected pursuant to this Agreement (hereinafter City's "Flow Control Option"). Contractor expressly consents to City's ability to direct the location for disposal of Solid Waste hereunder, and waives any and all rights to challenge City's ability to do so, including, without limitation, any rights under the Commerce Clause of the United States Constitution. As of the Effective Date, City shall be deemed to have exercised its Flow Control Option so as to require delivery of all Solid Waste Collected hereunder to the Orange County landfill system in a manner consistent with its obligations under the County Agreement (including, without limitation, its obligations related to Solid Waste that is delivered to a processing/transfer facility prior to being delivered to a landfill for disposal), and Contractor has agreed to handle all Solid Waste Collected hereunder in a manner consistent with City's exercise of its Flow Control Option as noted above. At any time during the Term of this Agreement the City Administrator may notify Contractor in writing that City no longer desires to exercise its Flow Control Option. In the event City so notifies Contractor of its desire to cease exercising its Flow Control Option, Contractor shall have the absolute discretion to utilize any disposal facility, transfer station, recycling facility, material recovery facility, landfill, or other facility of its choosing to retain, recycle, process, and dispose of Solid Waste generated

within the City, provided the use of such facility by Contractor enables it to meet all other requirements of this Agreement.

26.2. County Agreement. Contractor expressly acknowledges its awareness of the County Agreement which has been adopted and entered into by City. Moreover, Contractor acknowledges that it has had an opportunity to review the County Agreement, and is aware of the provisions thereof that require all Solid Waste collected in the City Limits to be disposed of in the Orange County landfill system. Contractor further acknowledges that the County of Orange is an intended third party beneficiary of Contractor's obligations relating in any way to the disposal of Solid Waste pursuant to this Agreement and the County Agreement. Contractor hereby adopts as its obligations hereunder such provisions of the County Agreement that require action or inaction by it as City's Solid Waste franchisee. Contractor represents and warrants that it can and will perform its duties in connection with this Agreement in such a manner as to ensure that City does not breach the terms of the County Agreement as a result of Contractor's actions or inaction. In the event City advises Contractor in writing that the County Agreement has been terminated, or that it no longer wishes to exercise its Flow Control Option in a manner consistent with the County Agreement, then Contractor's obligations pursuant to this § 26.2 shall be terminated.

Section 27. Indemnification.

27.1. General.

(A). Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively the "indemnities") 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) to the extent arising out of or resulting from Contractor's acts or omissions in the performance of this Agreement including: (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, Companies and/or subcontractors to comply in all respects with the provisions of this Agreement (including without limitation Contractor's obligation to ensure City complies with the requirements of the County Agreement), applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, 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); and (4) any challenge to the award of, or any provisions of this Agreement (including any claim that the application of any provision hereof violates any provision of the California Constitution). The foregoing indemnity and hold harmless provisions 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 indemnities negligence, but shall not extend to matters resulting from the indemnities sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys

acceptable to City) City, its elected and appointed boards and commissions, officers, employees, and agents against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse the City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

(B). Contractor, upon demand of the City, made by and through the City Attorney, shall protect City and appear in and defend the City and its elected officials, officers, employees and agents, in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to, disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or any other federal or state laws to provide Solid Waste Handling Services in the City.

(C). The provisions of this § 27.1 shall not terminate or expire, shall be given the broadest possible interpretation and shall survive the expiration or earlier termination of this Agreement.

27.2. Hazardous Substances Indemnification.

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

(1). Results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or

(2). Relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

(B). Contractor's obligations pursuant to this § 27.2 shall apply, without limitation, to:

(1). Any Claims brought pursuant to or based on the provisions of the Environmental Laws, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, the Carpenter-Presley-Tanner Hazardous Substances Account Act, California Health & Safety Code § 25300 *et seq.*, the California Hazardous Waste Control Laws, California Health and Safety Code § 25100, *et seq.*, and the California Porter-Cologne Act, California Water Code § 13000, *et seq.*;

(2). Any Claims based on or arising out of or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation by Contractor of any facility;

(3). Any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor;

(4). Any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

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

(D). For purposes of this Agreement, the term "Hazardous Contaminant" shall mean any "hazardous material," as that term is defined under California Health & Safety Code § 25501(o); any "hazardous substance," as that term is defined herein or under California Health & Safety Code §§ 25281(h), 25501(p), 25501.1 and under Title 42, § 9601(14) of the United States Code; any "hazardous waste," as that term is defined herein and under Title 42, § 6903(5) of the United States Code and under California Health & Safety Code § 25501(q); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code § 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos containing material.

(E). The provisions of this § 27.2 shall not terminate or expire, and shall survive the expiration or earlier termination of this Agreement.

Section 28. Contractor's Books and Records; Audits.

28.1. Maintenance and Inspection of Records. Contractor shall maintain all records relating to the services provided hereunder, including but not limited to Customer lists, billing records, accounts payable records, maps, AB 939 compliance records, records reflecting the number of refuse, recycling and green waste routes and route hours by service category (such

as residential, multi-family, commercial, rolloff and special services), records demonstrating facilities, equipment and personnel used to perform services, records reflecting the number of refuse, recycling and green waste containers in service by frequency of collection for each customer group (such as single family, multifamily, commercial, roll-off); records reflecting the number of roll-off box pulls, and such other documents and materials which reasonably relate to Contractor's compliance with the provisions of this Agreement (the "Records"), for the full Term of this Agreement, and an additional period thereafter of not less than three (3) years, or any longer period required by law. City shall have the right, upon five (5) business days advance notice, to inspect the Records. Such Records shall be made available to City at Contractor's regular place of business, but in no event outside the County of Orange.

28.2. CERCLA Defense Records. City views the ability to defend against the CERCLA 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. Contractor 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) for not less than five (5) years following the termination of this Agreement, and agrees to notify City's Risk Manager, City Clerk and City Attorney before destroying such records thereafter. At any time, including after the expiration of the Term hereof, Contractor shall provide copies of such records to City. The requirements of this § 28.2 shall survive the expiration of the Term of this Agreement or earlier termination hereof.

28.3. Audits.

28.3.1. Examination of Services. From time to time, anticipated to be at least once every five (5) years, City may request Contractor to make available any or all of its records related to performance hereunder available to an independent auditor or examiner, to be selected by the City, for auditing and examination purposes (a "Discretionary Audit"). City shall bear the cost of any Discretionary Audit except as otherwise provided herein. Should any Discretionary Audit reveal an underpayment of any Franchise Fee required pursuant to this Agreement, the amount of such underpayment shall become due and payable to City not later than fifteen (15) days after written notice of such underpayment is sent to Contractor by City, complete with any additional late charges as set forth herein. If a Discretionary Audit reveals inaccuracies or inconsistencies in more than five percent (5%) of all Customer accounts, either with the Contractor's operations or billing systems, or an underpayment of Franchise Fees of more than five percent (5%), Contractor shall bear the entire cost of such Discretionary Audit.

28.3.2. Route Audit. Contractor shall complete an audit, at its expense, of its Collection routes for all Customers at such times as may be requested by City; provided, however, that while City may request that such an audit occur at any time, it may not request such audits at Contractor's expense more than five (5) times during the Term. The timing of such audit is at the City's discretion and may be required to be timed with the issuance of a request for proposals for a new agreement. The route audit, at minimum, shall consist of an independent physical observation by Person(s) other than the route driver or route supervisor of

each Customer in the City. The route audit shall include, as a minimum, the following information for each account:

- Route Number;
- Truck Number;
- Account Name;
- Account Number;
- Account Service Address;
- Service Level per Billing System (quantity, size, frequency);
- Service Level per Routing System;
- Observed Containers (quantity, type and size);
- Bin condition; and
- Proper signage.

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

- Identification of the routes;
- Truck numbers;
- Number of accounts, by route and in total;
- Types of exceptions observed;
- Number of exceptions by type;
- Total monthly Billing, pre-audit;
- Total monthly Billing, post-audit (subsequent to corrections of identified exceptions);
- Percentage of the number of accounts with errors to the total number of accounts served; and
- Percentage of the "net" change in 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 audit, and 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 Contractor's plans to resolve any exceptions. The results of the audit shall be available for review by the City or its representative.

Section 29. Transition Obligations.

At the end of the Term, or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent solid waste enterprise it designates to assure a smooth transition of services. Contractor's cooperation shall include, but not be limited to, providing route lists, billing information and other operating records needed to service all premises covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific

performance of this covenant and/or other equitable relief necessary to enforce this covenant. Contractor shall provide any new solid waste enterprise with all keys, security codes and remote controls used to access garages, gates and bin enclosures. Contractor shall be responsible for coordinating transfer immediately after its final collection activities, so as to not disrupt services. 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 ninety (90) days prior to the transition date, provide an updated list two (2) weeks before the transition, and a final updated list with any changes the day before the transition. Contractor shall provide means of access to the new solid waste enterprise at least one (1) full business day prior to its first day of collection, and within sufficient time so as to not impede, in any way, the new solid waste enterprise from easily servicing all containers.

Section 30. General Provisions.

30.1. Force Majeure. Contractor shall not be in default under this Agreement in the event that its ability to provide Solid Waste Handling Services or Temporary Services, in compliance with its obligation to do so hereunder, is temporarily interrupted or discontinued for any of the following reasons: Riots, wars, sabotage, civil disturbances, insurrections, acts of government agencies, strikes or other labor disturbances, explosion, natural disasters such as floods, earthquakes, landslides, and fires, and "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (A) the financial inability of Contractor to perform; (B) failure of Contractor to obtain *any* necessary permits or licenses from other governmental agencies; or (C) the failure to obtain the right, or the loss of the right, to use the facilities of any public utility where such failure is due in substantial part to the acts or omissions of Contractor.

30.2. Independent Contractor. Contractor is an independent contractor and not an officer, agent, servant, or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, and subcontractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents, or subcontractors shall obtain any rights to retirement or other benefits which accrue to City employees.

30.3. Pavement Damage. Contractor shall be responsible for the cost of repair of any extraordinary damage to the public streets located within the City resulting from Contractor's negligence in providing the services required hereunder; provided such streets are constructed to City standards.

30.4. Property Damage. Any physical damage caused by the negligent or willful acts or omissions of employees, agents, or subcontractors of Contractor to private or public property shall be promptly repaired or replaced at Contractor's expense.

30.5. Right of Entry. Contractor shall not have the right, until Contractor receives permission from the property owner, to enter or drive on any private street, court, place, easement, or other private property for the purpose of providing Temporary Services and/or Solid Waste Handling Services pursuant to this Agreement.

30.6. Law to Govern; Venue. The laws of the State of California shall govern this Agreement.

30.7. Amendment(s). This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939, as implemented by regulations of Cal Recycle ("Regulations"), as they from time to time may be amended. In the event that AB 939 or other state or federal laws or regulations enacted after this Agreement has been enacted, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except as otherwise expressly stated herein, no other amendment of this Agreement shall be valid unless in writing duly executed by the parties.

30.8. Notices. All notices required or permitted to be given under this franchise shall be in writing and shall be personally delivered or sent by United States certified mail, postage prepaid, return receipt requested, and addressed as follows:

To City:	City of Placentia Attn: City Administrator 401 East Chapman Avenue Placentia, CA 92870
To Contractor:	Republic Waste Services of Southern California, LLC. Attn: General Manager 1131 North Blue Gum Street, Anaheim, California 92806

or to such other address as either party may from time to time designate by notice to the other given in accordance with this § 30.8. Notice shall be deemed given on the date served if served personally between the hours of 8:00 a.m. to 5:00 p.m. on any regular business day for City's business offices. If mailed, notice shall be deemed given three (3) business days from the date such notice is deposited in the United States mail in the manner proscribed above.

30.9. Guarantee of Contractor's Performance. Pursuant to a guarantee in substantially the form attached hereto as Exhibit "C," Republic Services, Inc., a Delaware corporation ("Guarantor") has agreed to guarantee Contractor's performance of its obligations pursuant to this Agreement, and Guarantor shall provide a fully executed copy of the Guarantee required by this provision concurrently with Contractor's delivery of this Agreement to City.

30.10. Savings Clause. If any non-material provision of this Agreement is for any reason held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity and enforceability of any of the remaining provisions of this Agreement.

30.11. Exhibits Incorporated. Exhibits "A" through "C" are attached to and incorporated in this Agreement by reference.

30.12. Joint Drafting. This Agreement shall be interpreted as if it were drafted jointly by the parties to the Agreement.

30.13. Attorneys' Fees and Litigation Costs. In the event either party brings any action or proceeding to enforce or interpret the terms or provisions of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and other litigation costs and expenses, including without limitation expert witness fees, consultant fees and costs. Without limiting its scope in any way, this provision is expressly intended to, and shall, apply to fees and costs incurred in any appeal.

30.14. City's Authorized Agent. Notwithstanding anything contained herein to the contrary, and excepting amendments hereto and such actions set forth herein specifically calling for City Council action or approval, the City Administrator is designated as City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by City.

30.15. Integrated Agreement. This Agreement contains the entire integrated agreement and understandings of the Parties concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the Parties, whether written or oral. The Parties acknowledges this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other party to execute this instrument.

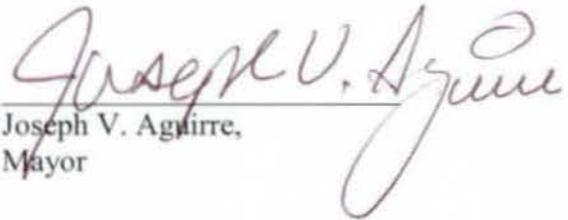
30.16. Section Headings. The section headings in this Agreement are for convenience of reference only and are not intended to be used in the construction of this Agreement nor to alter or affect any of its provisions.

30.17. Compliance with Law. In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, the provisions of the Municipal Code, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended.

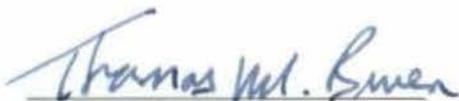
Contractor


James Ambroso
Vice President

City


Joseph V. Aguirre,
Mayor

Approved as to form:


Thomas M. Bruen
Counsel to Contractor

ATTEST: 
Patrick J. Melia,
City Clerk

Approved as to form:

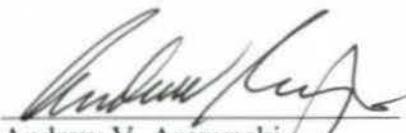

Andrew V. Arczynski,
City Attorney

EXHIBIT "A"
CITY OF PLACENTIA
RATE SUMMARY - EFFECTIVE JULY 1, 2010

	Service Fee	Landfill	Total Rate
Residential			
Single Family	\$18.55	\$2.06	\$20.61
Additional Containers			
Black "Trash" Container	\$4.88	\$2.06	\$6.94
Brown "Yard Waste" Container	\$4.23	n/a	\$4.23
Green "Recycling" Container	\$0.00	n/a	\$0.00
Commercial			
Commercial Barrel (Each) 1 x p/wk (Max of Four)	\$15.08	\$5.19	\$21.49
Two Yard Containers			
One Pick-up Only	\$97.51	\$14.35	\$111.86
Non-Scheduled Pick-up	\$46.40	\$3.31	\$49.71
Three Yard Containers			
First Pick-up	\$121.98	\$21.51	\$143.49
Each Additional Pick-up	\$65.90	\$21.51	\$87.41
Freq. Non-Scheduled Pick-up	\$57.02	\$4.96	\$61.98
Surcharge - Sunday Service	\$11.39	n/a	\$11.39
Three Yard Manure Containers			
First Pick-up	\$121.98	\$32.40	\$154.38
Each Additional Pick-up	\$65.90	\$32.40	\$98.30
Freq. Non-Scheduled Pick-up	\$57.01	\$7.48	\$64.49
Three Yard Compactors			
First Pick-up	\$150.50	\$53.10	\$203.60
Each Additional Pick-up	\$94.60	\$53.10	\$147.70
Freq. Non-Scheduled Pick-up	\$86.66	\$12.25	\$98.91
Surcharge - Sunday Service	\$11.39	n/a	\$11.39
Special Services			
Permanent Services			

15-Yard Demo Container	\$322.31		\$179.70	\$502.01
30-Yard Drop Off Container	\$304.71		\$149.75	\$454.46
40-Yard Compactor	\$382.81		\$209.65	\$592.46
Temporary Services				
Three Yard Containers				
3 Days + Dump	\$75.74		\$4.96	\$80.70
Each Additional Day	\$6.19	n/a		\$6.19
Three Yard Construction Bin				
First Pick-up	\$158.95		\$21.51	\$180.46
Each Additional Pick-up				
Freq.	\$77.60		\$21.51	\$99.11
Non-Scheduled Pick-up	\$57.02		\$4.96	\$61.98
15-Yard Demo Container	\$342.11		\$179.70	\$521.81
30-Yard Drop Off Container	\$320.11		\$149.75	\$469.86
Overweight Surcharge p/ton (Actual weight over 8 tons/load)	\$15.66		\$29.95	\$45.61

JULY 1, 2010 ADJUSTED RATES

220.719 Local CPI-U [12 Months January 2009]
 224.610 Local CPI-U [12 Months January 2010]

1.76% Local PCI-U Change [Adjustment in (A)]

\$22.00 Orange County Gate Fee July 2009
 \$29.95 Orange County Gate Fee July 2010-06-23

36.14% Orange County Gate Fee Change [Adjustment in (D)]

	(A) Service Fee	+	(B) One- Time 8.24 % Adj.	=	(C) Adjust. Service Fee [(A)+(B)]	(D) Orange Co Landfill	=	(E) Total Rate [(B)+(C)]	(F) Franchise [15% of (D)]	+	(G) Admin [5% of (D)]	=	(H) Fees Paid to Placentia	Net Percent Rate Change
Residential														
Single Family Adjusted Rate>>>	\$18.55 \$18.55		n/a		\$18.55	\$2.06 \$2.06		\$20.61 \$20.61	\$3.09		\$1.03		\$4.12	0.00%
Additional Containers														
Black "Trash" Container Adjusted Rate>>>	\$4.88 \$4.88		n/a		\$4.88	\$2.06 \$2.06		\$6.94 \$6.94	\$1.04		\$0.35		\$1.39	0.00%
Brown "Yard Waste" Container Adjusted Rate>>>	\$4.23 \$4.23				\$4.23	n/a n/a		\$4.23 \$4.23	\$0.63		\$0.21		\$0.85	0.00%
Green "Recycling" Container Adjusted Rate>>>	\$0.00 \$0.00		n/a		\$0.00			\$0.00 \$0.00	\$0.00		\$0.00		\$0.00	0.00%

NOTE: 2010 Residential Gate Fee Adjustments based on \$22.00 County Gate Fee
 2010 County Adjustment deferred to July 2011 by agreement of both City and Republic

	(A) Service Fee	+	(B) One- Time 8.24% Adj.	=	(C) Adjusted Service Fee [(A)+(B)]	(D) Orange Co Landfill	=	(E) Total Rate [(B)+(C)]	(F) Franch ise [15% of (D)]	+	(G) Admin [5% of (D)]	=	(H) Fees Paid to Placentia	Net Percent Rate Change
Commercial														
Commercial Barrel (Each) 1 x p/wk (Max of Four) Adjusted Rate>>>	\$14.82 \$15.08		\$1.22		\$16.30	\$3.81 \$5.19		\$18.63 \$21.49	\$3.22		\$1.07		\$4.30	15.35%
Two Yard Containers One Pick-up Only Adjusted Rate>>>	\$88.64 \$90.20		\$7.30		\$97.51	\$10.54 \$14.35		\$99.18 \$111.86	\$16.78		\$5.59		\$22.37	12.78%
Non- Scheduled Pick-up Adjusted Rate>>>	\$42.18 \$42.92		\$3.48		\$46.40	\$2.43 \$3.31		\$44.61 \$49.71	\$7.46		\$2.49		\$9.94	11.43%
Three Yard Containers First Pick-up Adjusted Rate>>>	\$110.89 \$112.84		\$9.14		\$121.98	\$15.80 \$21.51		\$126.69 \$143.49	\$21.52		\$7.17		\$28.70	13.26%
Each Additional Pick-up Adjusted Rate>>>	\$59.91 \$60.97		\$4.94		\$65.90	\$15.80 \$21.51		\$75.71 \$87.41	\$13.11		\$4.37		\$17.48	15.46%
Non- Scheduled Pick-up Adjusted Rate>>>	\$51.83 \$52.75		\$4.27		\$57.02	\$3.65 \$4.96		\$55.48 \$61.98	\$9.30		\$3.10		\$12.40	11.72%
Surcharge- Sunday Service Adjusted Rate>>>	\$10.35 \$10.35		\$0.85		\$11.39	n/a n/a		\$10.35 \$11.39	\$1.71		\$0.57		\$2.28	10.00%
Three Yard Manure Containers First Pick-up Adjusted Rate>>>	\$110.89 \$112.84		\$9.14		\$121.98	\$23.80 \$32.40		\$134.69 \$154.38	\$23.16		\$7.72		\$30.88	14.62%
Each Additional Pick-up Adjusted Rate>>>	\$59.91 \$60.97		\$4.94		\$65.90	\$23.80 \$32.40		\$83.71 \$98.30	\$14.75		\$4.92		\$19.66	17.43%

Non-Scheduled Pick-up Adjusted Rate>>>	\$51.83 \$52.74		\$4.27		\$57.01	\$5.49 \$7.48		\$57.32 \$64.49	\$9.67		\$3.22		\$12.90	12.51%
Three Yard Compactors First Pick-up Adjusted Rate>>>	\$136.82 \$139.23		\$11.27		\$150.50	\$39.00 \$53.10		\$175.82 \$203.60	\$30.54		\$10.18		\$40.72	15.80%
Each Additional Pick-up Adjusted Rate>>>	\$86.00 \$87.51		\$7.09		\$94.60	\$39.00 \$53.10		\$125.00 \$147.70	\$22.15		\$7.38		\$29.54	18.16%
Non-Scheduled Pick-up Adjusted Rate>>>	\$78.78 \$80.17		\$6.49		\$86.66	\$9.00 \$12.25		\$87.78 \$98.91	\$14.84		\$4.95		\$19.78	12.68%
Surcharge-Sunday Service Adjusted Rate>>>	\$10.35 \$10.35		\$0.85		\$11.39	n/a n/a		\$10.35 \$11.39	\$1.71		\$0.57		\$2.28	10.00%
	(A) Service Fee	+	(B) One-Time 8.24% Adj.	=	(C) Adjusted Service Fee [(A)+(B)]	(D) Orange Co Landfill	=	(E) Total Rate [(B)+(C)]	(F) Franchise [15% of (D)]	+	(G) Administrative [5% of (D)]	=	(H) Fees Paid to Placentia	Net Percent Rate Change
Special Services														
<u>Permanent Services</u>														
15-Yard Demo Container Adjusted Rate>>>	\$293.00 \$298.17		\$24.14		\$322.31	\$132.00 \$179.70		\$425.00 \$502.01	\$75.30		\$25.10		\$100.40	18.12%
30-Yard Drop Off Container Additional Containers	\$277.00 \$281.88		\$22.82		\$304.71	\$110.00 \$149.75		\$387.00 \$454.46	\$68.17		\$22.72		\$90.89	17.43%
40-Yard Drop Off Container Adjusted Rate>>>	\$348.00 \$354.13		\$28.68		\$382.81	\$154.00 \$209.65		\$502.00 \$592.46	\$88.87		\$29.62		\$118.49	18.02%

<u>Temporary Services</u>										
Three Yard Containers 3 Days + Dump Adjusted Rate>>>	\$68.85 \$70.07	\$5.67	\$75.74	\$3.65 \$4.96	\$72.50 \$80.70	\$12.11	\$4.04	\$16.14	11.32%	
Each Additional Day Adjusted Rate>>>	\$5.63 \$5.73	\$0.46	\$6.19	n/a n/a	\$5.63 \$6.19	\$0.93	\$0.31	\$1.24	10.00%	
Three Yard Construction Bin First Pick-up Adjusted Rate>>>	\$144.50 \$147.05	\$11.91	\$158.95	\$15.80 \$21.51	\$160.30 \$180.46	\$27.07	\$9.02	\$36.09	12.58%	
Each Additional Pick-up Adjusted Rate>>>	\$70.54 \$71.78	\$5.81	\$77.60	\$15.80 \$21.51	\$86.34 \$99.11	\$14.87	\$4.96	\$19.82	14.79%	
Non-Scheduled Pick-up Adjusted Rate>>>	\$51.83 \$52.75	\$4.27	\$57.02	\$3.65 \$4.96	\$55.48 \$61.98	\$9.30	\$3.10	\$12.40	11.72%	
15-Yard Demo Container Adjusted Rate>>>	\$311.00 \$316.48	\$25.63	\$342.11	\$132.00 \$179.70	\$443.00 \$521.81	\$78.27	\$26.09	\$104.36	17.79%	
30-Yard Drop Off Container Additional Containers	\$291.00 \$296.13	\$23.98	\$320.11	\$110.00 \$149.75	\$401.00 \$469.86	\$70.48	\$23.49	\$93.97	17.17%	
Overweight Surcharge p/ton (Actual weight over 8 tons/load) Adjusted Rate>>>	\$14.24 \$14.49	\$1.17	\$15.66	\$22.00 29.95	\$36.24 \$45.61	\$6.84	\$2.28	\$9.12	25.87%	

EXHIBIT "B"

Container/Bin Specifications

- Contractor shall provide Container Specifications to City for approval. All Containers utilized by Contractor shall perform to the reasonable satisfaction of the City Administrator in order to be utilized in City. All containers are to supplied by Contractor and are the property of the Contractor.
- Each Refuse, Green Waste and Recycling Cart utilized by Contractor shall be labeled with graphics so as to: (1) explain/depict the items for which it is designated to Collect, and (2) identify the name of Contractor.
- The body of Refuse Carts shall be a uniform black color, Recycling Carts shall be a uniform green color and Green Waste Carts shall be a uniform brown color.
- Any Cart distributed by Contractor in City after the Effective Date shall be newly manufactured or have been fully refurbished such that they are delivered to the Customer in a "like new" condition.
- Upon request of any Customer, Contractor shall provide Bins with lids that close securely and which are capable of being locked at rates that do not exceed those set forth in Exhibit "A".

EXHIBIT "C"

CITY SERVICE LOCATIONS

(List of City of Placentia Addresses with Free Solid Waste & Recycling Services)

110 S. Bradford Avenue

143 S. Bradford Avenue

200 N. Bradford Avenue

201 N. Bradford Avenue

401 E. Chapman Avenue

132 E. Crowther Avenue

505 Jefferson Street

2210 Kraemer Boulevard N

166 E. La Jolla Street

2999 E. La Jolla Street

900 S Melrose Street

380 S. Placentia Avenue

2101 Tuffree Boulevard

1530 Valencia Avenue

116 S. Walnut Avenue

EXHIBIT "D"

Corporate Guaranty

THIS GUARANTY ("Guaranty") is given as of the ___ day of _____, 2010, and is made with reference to the following facts and circumstances:

A. Republic Waste Services of Southern California, LLC. ("Contractor") is an affiliate of Republic Services, Inc., a Delaware Limited Liability Company ("Guarantor").

B. Contactor has entered into a franchise agreement with the City of Placentia, ("City"), with an Effective Date of _____, 2010, entitled "Amended, Revised and Restated Agreement Between The City of Placentia, a Charter City and municipal corporation and Republic Waste Services of Southern California, LLC, a wholly owned subsidiary of Republic Services, Inc., dba Placentia Disposal for Solid Waste Handling Services" ("Franchise").

C. It is a requirement of the Franchise that Guarantor guarantee Contractor's performance of the Franchise, including any ongoing obligations in the Amended and Restated Agreement for Refuse Collection entered into on or about February 7, 1989, which was amended on or about May 8, 1990 and August 15, 1995 ("Prior Agreement")

D. Guarantor is providing this Guaranty to induce the City to approve the Franchise.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. Guaranty of the Franchise. Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Contractor of each and every term and condition of the Franchise which Contractor is required to perform, satisfy or observe. In the event that Contractor fails to perform, satisfy or observe any of the terms and conditions of the Franchise Guarantor will promptly and fully perform, satisfy or observe them in the place of the Contractor (including by causing the services required of Contractor to be performed by a Solid Waste Enterprise acceptable to City). Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Contractor due to its breach of the Franchise. Included in the forgoing Guaranty, is a guarantee by Guarantor of any ongoing obligations of Contractor under the Prior 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 Contractor under the Franchise, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Franchise. 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 Contractor in an action to enforce, or for damages for breach of the Franchise (other than discharge of, or stay of proceedings to enforce, obligations under the Franchise 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 Contractor; (2) the actual or purported rejection by a trustee in bankruptcy of the Franchise, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Franchise; (3) any waiver with respect to any of the obligations of the Franchise guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Contractor; or 4) any merger or consolidation of the Contractor with any other corporation, or any sale, lease or transfer of any or all the assets of the Contractor. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code § 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code §§ 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Contractor, (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 Contractor 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 Contractor or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby waives and agrees to waive at any future time at the request of the City to the extent now or then permitted by applicable law, any and all rights which the Guarantor may have or which at any time hereafter may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, quit or surrender 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 nonpayment 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 Contractor 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 Franchise 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 Contractor's obligations under the Franchise. Guarantor shall not be released of its obligations hereunder as long as there is any claim by the City against Contractor arising out of the Franchise based on Contractor'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 Guarantor'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, with venue resting in Orange County, California.

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.

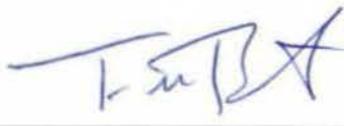
10. Authority. Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of incorporation and By-Laws, and that the person signing this Guaranty on its behalf 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 Administrator
 City of Placentia
 401 East Chapman Avenue
 Placentia, CA 92870

To the Guarantor: Republic Services, Inc
 Attn: Mr. Tim M. Benter
 Vice President and Assistant Secretary
 18500 North Allied Way
 Phoenix, AZ 85054
 Phone (480) 627-7153

Guarantor:
Republic Services, Inc.

By: 

Tim M. Benter
Title: Vice-President and Assistant Secretary

EXHIBIT "E"

Liquidated Damages

Each cause for liquidated damages identified herein is categorized as either "moderate," "serious," or "severe" as shown on the schedule below. If an individual task is not performed correctly or within required time lines, the Contractor will be considered in default. Once considered in default, liquidated damages may be assessed against the Contractor on a per-task, site-specific basis until the default is corrected. The assessment shall be: 1) \$100 per occurrence for moderate violations; 2) \$200 per occurrence for serious violations; and 3) \$400 per occurrence for severe violations.

In the event of a default, the above liquidated damages shall be assessed for failure to complete any individual task. For moderate violations, after the third written notice of violation in a calendar year, damages may be assessed during that year for all violations thereafter concerning such task, with or without prior notice of violation. For serious and severe violations, written notice shall be given of the violation with three (3) days to cure. Liquidated Damages shall be assessed if the default is not timely cured. The assessment will be doubled after eight (8) violations per year for moderate violations, after three (3) violations per year for serious violations and after each violation for severe violations unless the violation is waived, in writing, by the City Administrator for good cause. The doubling applies to the specific task and not the class or category. The number of violations of a particular task are calculated on a per fiscal year (July 1 to June 30) basis.

Any liquidated damages payable hereunder shall be paid within ten (10) days of the date payment is requested by the City Administrator. If any payment is not timely made, such amount shall thereafter be subject to interest pursuant to § 18.

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below, as assessed by the City Administrator:

1. Collection Reliability.

(A) For each failure to commence service to a new Customer account within seven (7) days after order. **moderate**

(B)..For each failure to Collect Solid Waste from any established Customer account on the scheduled Collection day not due to Customer's failure to timely and properly set out Containers for collection and not Collected within the period described in this Agreement. **moderate**

(C) For each failure to Collect Solid Waste, which has been timely and properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days **moderate**

2. Collection Quality.

(A) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place cans upright. **moderate**

(B) For each occurrence of excessive noise in violation of Chapter 23.76 of the Municipal Code or discourteous behavior. **serious**

(C) For each occurrence of Collecting Solid Waste during unauthorized hours. **serious**

(D) For each occurrence of intentional, reckless, negligent damage to private property. **moderate**

(E) For each failure to clean up Solid Waste spilled from Solid Waste Containers during Contractor's collection of the Container (and provided that the Container is not overfilled by Customer) within ninety (90) minutes. **moderate**

3. Customer Responsiveness.

(A) For each failure to initially respond to a Customer complaint within one (1) business day. **serious**

(B) For each failure to process Customer complaints to City as required by § 10. **serious**

(C) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within ten business days of request from City or Customers, per day. **moderate**

(D) For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor. **moderate**

(E) For each additional thirty (30) day increment of time in which Contractor has failed to respond to a claim for damages within thirty (30) days from the claim date. **moderate**

(F) For each failure to resolve a dispute with a Customer (other than a claim for damages covered by (f)) within the fifteen (15) day period set forth in § 3.E, above. **moderate**

4. Timeliness of Submissions to City.

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

- (A) Monthly Reports: **moderate**
- (B) Quarterly Reports: **serious**
- (C) Annual Reports: **serious**