

AGREEMENT

BETWEEN

CITY OF FULLERTON

AND

M-G DISPOSAL SERVICES, LLC

FOR

SOLID WASTE HANDLING SERVICES

EFFECTIVE MARCH 1, 2009

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AGREEMENT

This Agreement ("Agreement") is entered into to be effective as of the 1st day of March 2009, by and between the City of Fullerton ("City") and M-G Disposal Services, LLC, a Delaware Limited Liability Company ("Contractor") (collectively, the "Parties") to provide an exclusive franchise for Solid Waste Handling Services within the City.

RECITALS:

A. 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.

B. Pursuant to California Public Resources Code Section 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.

C. City previously entered a franchise agreement for Solid Waste Handling Services with Contractor dated July 1, 1999 (the "Original Agreement"). The Original Agreement required all Solid Waste Collected by Contractor to be delivered to that certain transfer/processing facility known as the Taormina Facility (which facility is wholly owned by Contractor's parent company, the Guarantor hereto), pursuant to an agreement with Taormina Industries dated July 1, 1994 (the "Taormina Agreement"). The Original Agreement and the Taormina Agreement are collectively referred to herein as the "Prior Agreements." It is the desire of the parties by entering this Agreement (as well as a related agreement pertaining to the termination of the Taormina Agreement) to supersede the Prior Agreements, except with respect to certain continuing obligations as more fully set forth herein.

D. 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"). City and Contractor desire to leave no doubts as to their respective roles, and to memorialize that by entering into this Agreement, 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 indemnify the 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.

E. 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 Public Resources Code Section 40000, et seq.

F. 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 the County Agreement. 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.

C O V E N A N T S:

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 above recitals are true and correct and incorporate them herein as if they were fully restated.

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

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

2.2 Affiliate

"Affiliate" means 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 Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided,

however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

2.3 Animal Waste

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

2.4 Bins

"Bins" shall mean a metal Container, including dumpsters, compactors, and any similar such devices with a capacity of under ten (10) cubic yards.

2.5 Bulky Items

"Bulky Items" means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators with and without Freon, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); Residential wastes (including wood waste, tree branches, scrap wood, in the aggregate not exceeding one cubic yard per Collection); 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), batteries, and fluorescent light tubes. Bulky Items do not include car bodies, Construction and Demolition Debris or (with the exception of appliances/white 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.

2.6 Cart

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated process, as opposed to a manual process of lifting and dumping.

2.7 City

"City" shall mean the City of Fullerton, a municipal corporation, located in Orange County, California.

2.8 City Limits

"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 Fullerton, and which are from time to time amended to reflect changes.

2.9 City Manager

"City Manager" shall mean the City Manager of the City of Fullerton or his or her designee.

2.10 Collect/Collection

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

2.11 Commercial Premises

"Commercial Premises" means 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.

2.12 Container

"Container" means any and all types of Solid Waste receptacles, including Carts and Bins.

2.13 Contractor

"Contractor" shall mean M-G Disposal Services, LLC, a Delaware Limited Liability Company, 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.

2.14 County Agreement.

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

2.15 Customer

"Customer" shall mean any person receiving Solid Waste Handling Services from Contractor within the Franchise Area.

2.16 Dwelling Unit

"Dwelling Unit" shall mean one or more rooms designed for occupancy by one family for living and sleeping purposes and containing kitchen facilities or an area designed for the preparation of food for use solely by one family.

2.17 Effective Date

"Effective Date" shall mean March 1st, 2009.

2.18 Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the 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.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

2.19 Franchise Area

"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.

2.20 Franchise Fee

"Franchise Fee" shall mean the franchise fee set forth and more fully defined in Section 11 hereof.

2.21 Gross Receipts

"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 Section to the contrary, for purposes of calculating Franchise Fees due to City by Contractor, Gross Receipts shall be deemed to not include an amount equal to AB 939 Fees paid by Contractor to City pursuant to Section 11.6 of this Agreement.

2.22 Hazardous Substance

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances," "hazardous materials," "Hazardous Wastes," "toxic waste," "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.(CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §5101, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7401 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local laws or regulations, including any of the Environmental Laws, currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products, and by-products.

2.23 Hazardous Waste

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

2.24 Multi-Family Dwelling

"Multi-Family Dwelling" means any building or lot containing more than one Dwelling Unit at which Contractor determines (and City agrees) the Dwelling Units must receive Solid Waste Handling Services through the use of shared Bins, since they are 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 Customer's Premises qualifies for purposes of this Agreement as a Single Family Dwelling or Multi-Family Dwelling shall be resolved by the City Manager whose decision shall be final.

2.25 Municipal Code

"Municipal Code" shall mean City's Municipal Code.

2.26 Person

"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.

2.27 Premises

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

2.28 Recyclable Material

"Recyclable Material" or "Recyclables" shall mean that Solid Waste discarded within the Franchise Area which is capable of being recycled.

2.29 Residential Premises

"Residential Premises" shall mean all premises 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.

2.30 Rolloff Box

"Rolloff Box" means Solid Waste Collection Containers of ten (10) yards or larger, including compactors.

2.31 Single Family Dwelling

"Single Family Dwelling" means a building or lot containing one Dwelling Unit, and for purposes of this Agreement includes buildings and lots with more than one 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 City.

2.32 Solid Waste

"Solid Waste" shall mean and include all discarded putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, construction waste, industrial waste, commercial Solid Waste, Bulky Items, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of "Nonhazardous Solid Waste" set forth in the California Code of Regulations, as it may be amended from time to time. Solid Waste does not include hazardous (Class I) waste, low-level radioactive waste, untreated medical waste, or Special Wastes as defined herein.

2.33 Solid Waste Handling Services

"Solid Waste Handling Services" means the Collection, transfer, transport, recycling, processing, and disposal of Solid Waste.

2.34 Special Wastes

"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.

2.35 Temporary Service

"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.

2.36 Term

"Term" shall have the meaning ascribed in Section 6 of this Agreement.

**SECTION 3.
GRANT OF EXCLUSIVE FRANCHISE FOR SOLID WASTE
HANDLING SERVICES FROM ALL RESIDENTIAL AND
COMMERCIAL PREMISES, AND FOR PROVIDING
TEMPORARY SOLID WASTE HANDLING SERVICE**

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, 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 provisions set forth in this Agreement to the contrary, the exclusive franchise granted herein shall exclude the Collection, transportation, recycling, and disposal of:

(A) any Solid Waste otherwise within the scope of this Agreement which is transported by a Self Hauler as that term is used in the Municipal Code, or any other City ordinance, resolution, regulation or policy, as such may be adopted or amended from time to time;

(B) the sale or donation of Recyclable Material by the person or entity that generated such Recyclable Material (the "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; Universal Waste; E-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 Public Resources Code Section 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 instituting 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 its reasonable legal costs, extraordinary administrative costs (including staff time), or other expenses 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 Section 49520 of the Public Resources Code. Additionally, by and upon the execution of this Agreement, Contractor agrees to the termination of the Prior Agreements as of the Effective Date, agrees to waive any and all rights under the Prior Agreements, 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 Prior Agreements 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 Prior Agreements 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 Prior Agreements.

**SECTION 6.
TERM**

The term of this Agreement (the "Term") shall be for the period of time commencing on March 1, 2009, and ending at midnight on June 30, 2019, unless this Agreement is terminated sooner pursuant to Section 18 hereof, or otherwise.

**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 Representation

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 Sections 14 and 15 hereof, and shall comply with all ongoing requirements relating thereto, and shall provide the Corporate Guarantee required by Section 30.9 hereof.

7.4 Effectiveness of City Council Action

City's Resolution approving this Agreement shall have become effective pursuant to California law.

7.5 Payment of Fees and Costs

Contractor shall have made payment to City of all fees, costs and other payments due as more fully set forth in Section 11.

**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: (1) 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, (2) at all times comply with the provisions of all laws and regulations, including any applicable National Pollution Discharge Elimination Systems ("NPDES") permit, with regards to leaking of materials. Contractor shall immediately clean up any spills from its equipment of which it becomes or is 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 a.m. and for Customers at Residential Premises until 7:00 a.m., 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 Manager 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 Saturday's; excepting Temporary Bin Services and Collection occurring on Saturdays following such holidays as may be approved by the City Manager. No Solid Waste Handling Services shall occur on Sundays at Residential Premises, except in exceptional circumstances for which specific approval is given by the City Manager. 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 Manager 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 Manager such that Customers at all Residential and Commercial Premises within the City will have not less than one 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 Manager.

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, or on behalf of any other entity operating or existing within City that is not subject to this Agreement, and is specifically prohibited from combining Collection routes related to services provided pursuant to this Agreement with Collection routes for other jurisdictions it may service.

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 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 Manager.

(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 at no charge two 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's 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 it.

(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 Manager 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 Section 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, 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 notice shall be retained 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. Contractor shall also, at no additional charge, Collect Solid Waste which a Customer may place adjacent to their Refuse Cart(s). 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. In addition, in cases where a reasonable need exists for an even smaller Refuse Cart Contractor shall provide Customers with a 35 gallon Refuse Cart(s). Any dispute as to whether a "reasonable need" exists for a 35 gallon Refuse Cart shall be resolved by the City Manger. 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 no additional charge. 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 City determines the selected location may cause safety or other concerns, City may make the final determination of the Collection location. It is the intent of the parties that the services provided under this Agreement will result in an automated Collection system that includes source separation of recyclable materials. Accordingly, while Contractor agrees to Collect all Solid Waste placed out for Collection by Customers at Single Family Dwellings, if Solid Waste is routinely placed for Collection other than in a Refuse Cart, Contractor shall work with the Customer involved to determine if the Customer is in need of additional Refuse Carts. The City Manager is authorized to require Contractor to deliver additional Refuse Carts to any such Customers or to require such other action of Contractor as is reasonably deemed necessary to ensure the Collection system, including specifically the recycling programs, contemplated by this Agreement is achieved. The City Manager shall meet with Contractor after the first anniversary of the Effective Date for the purpose of reviewing this Section 8.2.1 and comparing it to the actual conditions occurring in the field with Customers, and is thereafter authorized to agree to amendments to this Section 8.2.1, if necessary, to carry out the intent hereof.

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 knowledge there is no other capable persons 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 City's approval, 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 Manager.

8.2.3 Single Family Dwellings – Manure Collection

Contractor may provide Customers at Single Family Dwellings whose premises are zoned in a manner authorizing equestrian or other large animals to be kept on site, and who so request, with Bins for the collection of manure at rates that do not exceed the maximum rates set forth on Exhibit A.

8.2.4 Recycling Program for Single Family Dwellings 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. In addition, in cases where a reasonable need exists for an even smaller Recycling Cart Contractor shall provide Customers with a 35 gallon Recycling Cart(s). Any dispute as to whether a "reasonable need" exists for a 35 gallon Recycling Cart shall be resolved by the City Manger. 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. At a minimum the following materials shall be allowed to be deposited by Customers for Collection in Recycling Carts aluminum cans; glass jars and bottles; bi-metal, and tin cans; empty aerosol containers; polyethylene terephthalate plastic ("PET"); high density polyethylene plastic ("HDPE"); plastics types 3 – 7; plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak[®] and waxed cardboard); coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

8.2.5 Curbside Grease Collection Program

If ever required by the 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 Manager finds satisfactory and approves. Contractor shall be responsible to ensure the Curbside Grease Collection Program complies with all applicable laws and regulations. At such time as (if) 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.

8.2.6 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 no additional charge. 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. In addition, in cases where a reasonable need exists for an even smaller Green Waste Cart Contractor shall provide Customers with a 35 gallon Green Waste Cart(s). Any dispute as to whether a "reasonable need" exists for a 35 gallon Refuse Cart shall be resolved by the City Manger. Contractor shall Collect green waste placed in Green Waste Carts for Collection from each Customer on the same day as such Customers' 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. In addition to collecting green waste placed for Collection in Green Waste Carts as described above, on the Collection day for each Customer to whom this Section applies, Contractor shall, by a manual process, Collect all green waste placed for Collection by Customers which is either bundled, placed in Customer provided Containers, or placed in compostable bags. In addition, Contractor shall make available tags, of a design approved by City, which may be distributed to Customers utilizing Customer provided Containers for green waste Collection. These tags shall be designed in a manner allowing Customers to affix them to, and thereby identify, those Containers provided by Customers for the Collection of green waste.

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 C for Solid Waste Handling Services ("Refuse Bins"). Contractor shall provide a 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 ten (10) 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 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 Manager shall have the ability to approve the number of Refuse Bins used at such location. Contractor may charge Customers living in each Dwelling Unit at a Multi-Family Dwelling rates that do not exceed the maximum rates set forth in Exhibit A. In addition, Contractor may charge the Person who owns or manages each Multi-Family Dwelling rental 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 unlimited Bulky Item Collection services to residents living at all Single Family Dwellings and Multi-Family Dwellings in City on an on-call basis. The unlimited 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. 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 and Multi-Family Dwellings in City. Should an apartment manager, property manager, or the owner of a Multi-Family Dwelling contact Contractor for Bulky Item Collection in connection with Bulky Items not generated at the Dwelling Unit at which such person actually resides, Contractor shall provide Bulky Item Collection Service in the same manner as to other Commercial Premises as set forth in Section 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, Transformation, 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 not used to compact the Bulky Items. The disposition of Bulky Items shall be tracked by Contractor and this information shall be included in Contractor's quarterly reports to City.

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 (the "Sharps Collection Program") that the City Manager finds satisfactory and approves. 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 (if) 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 (the "Non-Controlled Medication Collection Program") that the City Manager finds satisfactory and approves. 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 (if) 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 on Exhibit A in order to compensate Contractor for implementing such a program.

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 City's Municipal Code, health and safety requirements, or by the City Manager, 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.

8.3.2 Commercial Carts

As an alternative to the requirements of Section 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, City shall make the final determination as to whether Collection in a Refuse Cart may occur.

8.3.3 Commercial Bulky Item Service

Contractor shall provide unlimited Bulky Item Collection services to Commercial Customers 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 Sections 8.2.9 and 8.2.10.

8.3.4 Other Collection Programs As May Be Required by Law

In the event the California Integrated Waste Management Board, or 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 meet the City Manager's reasonable approval. At such time as (if) 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 Section 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 consecutive weeks. Bins used for Temporary Service shall not remain in any public rights-of-way for a period exceeding two consecutive weeks. Bins may not be placed in any public rights-of-way so as to create a safety hazard or so as to block any right-of-way to a degree that it is not reasonably usable. Bins placed in City's rights-of-way shall be subject to such requirements as may be imposed by City, and at a minimum shall be equipped with reflectors, reflective tape, reflective paint, or other reflective devices which, to the satisfaction of the City Manager, make such Bins reasonably visible to vehicle traffic at night.

(D) At any such times as City may have in place an 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 services for construction contractors in City as

may be contemplated by 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) 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.

8.5 Recycling Obligations and Public Education Program

8.5.1 Minimum Requirements for Recyclable Materials, Green Waste and Rolloff Boxes

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, 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 the California Integrated Waste Management Board. All Rolloff Boxes, whether for Commercial Customers or Temporary Service shall be delivered to a properly permitted facility for recycling and reuse purposes.

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 (the "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, and all amendments thereto, and that it shall do so without imposing any costs or fees other than those set forth on the attached Exhibit A (including if new programs are implemented which are not called out herein).

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 Source Reduction and Recycling Element (SRRE) and Household Hazardous Wastes Element (HHWE) of the 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, without limitation, the requirements thereof generally relating to (i) the delivery of Solid Waste only to transfer stations that provide quarterly certifications of Solid Waste delivered, and (ii) 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 the California Integrated Waste Management Board 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 the California Integrated Waste Management Board 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 Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in AB 939, and all amendments thereto. 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 the California Integrated Waste Management Board ("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 the Board;

(C) assist City in preparing for, and participating in, the Board's biannual review of City's SRRE pursuant to Public Resources Code Section 41825;

(D) assist City in applying for any extension, including under Public Resources Code Section 41820, if so directed by City;

(E) assist City in any hearing conducted by the Board 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 the Board pursuant to AB 939;

(I) be responsible for and pay, any fees, penalties or other costs imposed against the City by the Board, 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 Additional Services

As part of the consideration for entering this Agreement, Contractor shall provide the following additional services at no charge, and shall not adjust its rates to Customers to offset costs incurred in providing any of the following services:

8.6.1 Monitoring and Cleaning of Bin Enclosures

Contractor shall work with the City Manager in identifying and resolving continual 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 when they are required by City at rates subject to approval by City.

8.6.2 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.

8.6.3 Recycling Assistance for Special 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.

8.6.4 Holiday Trees

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

8.6.5 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.

8.7 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 Manager. Contractor shall notify the City Manager 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 (so called "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 Biannual Inspection of Terminal ("BIT") inspection reports to City within 30 days of its 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 Manager.

(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 and any applicable NPDES permit, 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, and not less than once every two years, 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 Manager. 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, and at a minimum shall have a video monitor based back-up system, or its equivalent. 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. No fluids shall be washed into storm drains at any time. All NPDES dry-cleaning measures shall be complied with. All Collection Vehicles must be equipped with absorbent for such 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, as approved by the City Manager.

(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 75db (seventy-five decibels) when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground.

(O) Any Collection Vehicle that the City Manager deems inappropriate for use in City for any reason (including its appearance) shall be removed from service in City, until such time as (and if) the City Manager determines his concern regarding said Collection Vehicle are corrected.

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 Manager gives his 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 duties shall, at all times, carry a valid operator's license for the type of vehicle he 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.

Contractor shall make reasonable efforts to determine if its employees working in the field (i.e., drivers of Collection Vehicles, and employees otherwise involved in Collection at Customer Premises) have been convicted of a felony, and shall identify any such employees known to it to City. City shall have the ability to require that any employee so identified by Contractor not work in the field within City.

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, inefficient, 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 meet 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. 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, holidays excepted. At least one responsible and qualified representative of Contractor, capable of communicating in English, 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, and a similarly qualified person shall be available for communication with the public by phone during any times other than Office Hours when Collection is occurring.

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 Spanish 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 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, it shall send a letter to the caller indicating its efforts.

(C) Contractor shall record Customer complaints regarding Customer service personnel in accordance with Section 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 monthly, 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 Section 8.7, the matter shall be dealt with pursuant to this Section, 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) At a minimum, 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 Implementation Plan and On-going Education Requirements

(A) Prior to implementing the transition from the manual service provided under the Original Agreement to the automated service contemplated herein, Contractor shall submit a written implementation plan to the City Manager and shall receive the City's Manager's approval of such plan. All materials and programs related to the implementation plan 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. The implementation plan shall include at least the following minimum requirements:

(1) *Initial Mailing* – Contractor will prepare and mail an initial mailing to all Customers explaining the transition from the existing manual Solid Waste Handling Service program to the new program as defined by this Agreement. The mailing shall be approved in advance by City and shall describe program changes, dates of program implementation, options for using or disposing of existing Customer Containers, Recycling and diversion programs available, and other pertinent information as determined by City.

(2) *Workshops*– Contractor will conduct public workshops to educate the public about the transition from the existing Solid Waste Handling Service program to the new program as defined by this Agreement. At each workshop Contractor will display the new Carts to be distributed pursuant to this Agreement. Contractor shall pay for outreach as needed to inform the public about the workshops, which shall at a minimum include (4) four one-quarter page ads in local newspapers for each workshop. City and Contractor shall coordinate to determine whether Spanish interpreters shall be present at the workshops, and if certain workshops shall be presented in Spanish

(3) *Instructional Packet Accompanying Company-Provided Containers* – An information packet shall be attached to each set of Carts distributed to a Customer. This packet shall include a methodology (such as stickers), approved by City, to enable Customers to identify Customer Containers which Customers desire to have Collected and disposed of by Contractor. In addition, the information packet shall include written materials that describe available services, including available Recycling and diversion programs; provide instructions for proper use of the Carts provided (such as how to place Carts for Collection, and the types of materials to be placed in each Cart); explain options for using or disposing of existing Customer Containers; detail holiday Collection schedules; and provide Contractor's Customer service phone number.

(4) *Container Labels* – Refuse, Recycling and Green Waste Carts shall carry stickers/labels or other identifying markings indicating the materials that should and should not be placed in each Container.

(B) 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:

(1) *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.

(2) *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, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions.

(3) *Corrective Action Notice* – Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection, that explains the appropriate manner for disposal of such items.

(4) *Contractor Representative* – Contractor shall retain on its staff an individual who shall as part of his or her job function routinely visit civic groups, school assemblies, and homeowners' associations, to promote and explain the Recycling and other programs that Contractor offers, and participate in demonstrations, and civic events.

(5) *Web Site Page* – Contractor shall dedicate one 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. During the first six months following the implementation of new services hereunder, this web page shall also provide information explaining the new service, the proper use of Carts, and the options to either dispose of or continue using existing Customer provided Containers. 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 Reimbursement of Renegotiation Costs

Contractor shall pay to City a one-time lump sum payment to reimburse the City for its actual staff expenses and out-of-pocket costs (including specifically consultant and legal fees) it incurred in connection with renegotiating with Contractor and entering this Agreement. City shall provide an invoice to Contractor for the amount due pursuant to this Section and the outstanding amount shall be paid by Contractor within thirty (30) days of being invoiced by City.

11.2 Administrative Cost Reimbursement

On or before July 1, 2009, and or before July 1 each year thereafter, Contractor shall make a payment to City in the amount more fully set forth in this paragraph intended to defray its administrative costs related to this Agreement (the "Administrative Cost Reimbursement"). The amount of the annual Administrative Cost Reimbursement shall be the sum of: (1) One Hundred Thousand Dollars (\$100,000.00) [adjusted annually by the change in the Consumer Price Index for the 12 month period ending the preceding March 31¹, for All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County average]; plus (2) its actual consultant costs related to requests from Contractor pertaining to this Agreement [i.e., requests for discretionary rate adjustments, requests for transfers, or requests to consider new programs]; plus (3) its legal fees and out of pocket costs incurred in the administration of this Agreement, including fees and costs associated with analyzing new legislation, considering requests from Contractor (including specifically, without limitation, requests for rate increases), and otherwise analyzing issues that arise in connection with this Agreement. Commencing with the payment due July 1, 2009, invoices for the Administrative Cost Reimbursement will be provided to Contractor by City and shall be due to City within thirty (30) days of the date such invoice is mailed by City, or on July 1, whichever comes later. If any invoice for the Administrative Cost Reimbursement is not timely paid by Contractor, and in addition to any other remedy provided by law, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) per month, or portion thereof, of the amount owing until paid.

¹ The first CPI adjustment shall occur in connection with the 12 month period ending March 31, 2010 so as to apply to the payment due on or before July 1, 2010.

11.3 Franchise Fee

Contractor shall pay to City, a franchise fee equal to seven percent (7%) of Contractor's annual Gross Receipts each year, or portion thereof, during the entire Term of this Agreement (the "Franchise Fee"). Except with respect to Gross Receipts collected from Customers by City on behalf of Contractor, said Franchise Fee shall be paid to City monthly on or before the fifteenth (15th) day of each month. Should any such due date fall on a weekend or holiday in 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 amount of each payment shall be equal to seven percent (7%) 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 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. Franchise Fees shall be accompanied by a statement certified by an officer of 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 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.

11.4 Services at City Facilities

Contractor shall provide Collection services at all Premises owned and/or operated by the City, at no cost to City 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 Manager.

11.5 Future Negotiations Pertaining to Sharing of CRV revenues

Within 90 days following July 1, 2013 Contractor shall provide City with a summary of all revenues it receives as a result of payments from the State of California's California Redemption Value ("CRV") program which pertain to Solid Waste Collected in City between the Effective Date and July 1, 2013. The summary shall at a minimum detail the types of CRV materials Collected within City by Contractor and the amounts paid by to Contractor or any of its affiliates by the State of California in connection with CRV materials Collected by Contractor during the applicable period. Within 60 days following the delivery of the summary required by this Section, Contractor and City shall meet and engage in good faith negotiations designed to determine if and to what degree the parties shall share in the revenues paid to Contractor by the State related to CRV. The intent of this Section is to allow the parties to evaluate the financial terms of this Agreement after its five year anniversary, compare it to similar agreements in place in other cities in Orange County at that time, and, if it is determined that City is not fairing as well financially as other cities receiving similar services, to adjust the financial terms hereof to bring City's financial compensation in line with standards in other Orange County cities for the Term hereof following July 1, 2013 utilizing CRV revenue as the means to accomplish that intent.

11.6 Annual Contribution to Community Programs

As further consideration for the rights granted to Contractor herein, contractor shall make a payment of \$62,500 to City each year during the term hereof for City to use for community programs of any nature as it deems appropriate (the "Community Program Payment"). Such payments shall be due on or before July 1 of each year, with the first payment due on or before July 1, 2009, and thereafter payments due on July 1, each year with the final payment due on or before July 1, 2019. The Community Program Payment shall be adjusted each year during the Term by the change in the Consumer Price Index for the 12-month period ending the preceding March 31² [All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County average.]

11.7 AB 939 Fee

Contractor shall pay City an amount as more fully set forth below on a monthly basis which is intended to defray City's costs associated with implementing and administering recycling and diversion programs required to ensure compliance with AB 939 (the "AB 939 Fee"). Except with respect to Gross Receipts collected from Customers by the City on behalf of Contractor, said AB 939 Fee shall be paid to City monthly on or before the fifteenth (15th) day of each month. Should any such due date fall on a weekend or holiday in 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. AB 939 Fees shall be accompanied by a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid, and setting forth the basis for their calculation in a manner acceptable to City. The AB 939 Fee due in connection with amounts that are collected from Customers by the 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. The amount of each payment shall be based upon the type of service provided to each Customer and on a monthly basis shall be as set forth on the following Table 1, and the amounts shown below shall be adjusted annually on July 1st by the change in the Consumer Price Index for the 12 month period ending the preceding March 31³, for All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County average:

Table 1:
Monthly AB 939 Fee Calculation

Residential Customers:

- Service at Single Family or Multi-Family Dwellings: \$.48/month/Customer.
- Service via 1.5yd manure Bins: (\$.80/month) x (# pickups/week), plus an additional \$.30/Collection for unscheduled additional Collections.

² The first CPI adjustment shall occur in connection with the 12 month period ending March 31, 2010 so as to apply to the payment due on or before July 1, 2010.

³ The first CPI adjustment shall occur in connection with the 12 month period ending March 31, 2009 so as to apply to the payment due on or before July 1, 2009.

Commercial Customers:

- Service via Carts: (\$.15/month) x (# pickups/week).
- Service via 1.5yd Bin (\$.40/month) x (# pickups/week), plus an additional \$.30/Collection for unscheduled additional Collections.
- Service via 3yd Bin: (\$.80/month) x (# pickups/week), plus an additional \$.30/Collection for unscheduled additional Collections.
- Service via 3yd or 6yd Mini Packer: (\$2.40/month) x (# pickups/week), plus an additional \$.90/Collection for unscheduled additional Collections.
- Service via Rolloff Boxes (including 40yd DOB, 15yd Lowboy, and 20/30/40yd compactors): \$1.00/ton Solid Waste Collected/month.

Temporary Service Customers:

- 3yd Bins: \$.50 each time contents of Bin is Collected.
 - Irregular size Bins: \$.30/cubic yard of Bin each time contents of Bin is Collected.
 - 10yd or 15yd Rolloff Boxes: \$1.00 each time Rolloff Box is Collected plus \$1.00/ton for each ton over weight limit noted on Exhibit A.
 - 40yd Rolloff Boxes: \$7.00 each time Rolloff Box is Collected plus \$1.00/ton for each ton over weight limit noted on Exhibit A.
-

**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 five percent (5%) of the amount 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 Residential Customers

13.1.1 General – Use of City Water Bills

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 and bills for such services shall be included along with the bills for water services City provides to such Customers. City will collect payments mailed to it by such Customers, on behalf of Contractor, deduct applicable Franchise Fees and AB 939 Fees, as well as such other amounts (if any) owed to City pursuant to this Agreement, and thereafter remit the balance of such payments to Contractor; provided, however, such billing services will not be provided for those Premises for which a Self Hauler exemption has been established as provided in the Municipal Code. If, for any reason, billing for a Customer at a Single Family Dwelling is not provided by City as contemplated by the parties herein, such Customer shall be billed for services by Contractor in the same manner as other Customers, as set forth herein below. City is billing Customers on behalf of Contractor, however Contractor shall be responsible for collecting amounts unpaid if Customers do not pay amounts indicated as due for Contractor's services on City's water bills. City shall endeavor to assist Contractor with its collection efforts if requested by Contractor, however City's obligation shall be limited to providing such assistance as it deems reasonable and prudent.

13.1.2 Refunds for Vacant Properties

Customers that own Single Family Dwellings which are vacant for more than ninety (90) days shall be entitled to a refund from Contractor for any amounts paid either in connection with City water bills or directly to Contractor for each thirty (30) day period during which the vacancy exists. Such Customers shall be responsible to provide reasonable evidence to Contractor, pursuant to such guidelines as the City Manager is hereby authorized to develop, demonstrating the Premises was vacant for the period in question and that payments for which reimbursement is sought was paid. Requests for refunds shall be made within twelve (12) months of the date payment is made. Contractor shall be responsible to develop a methodology for evaluating and paying such refund requests, which shall be subject to the City Manager's approval. Any Customer grievance regarding a request for a refund pursuant to this Section may be appealed by the Customer to the City Manager whose decision shall be final. Contractor shall be entitled to receive a credit against future Franchise Fee payments for overpayments of Franchise Fees that may occur due to refunds provided pursuant to this Section.

13.2 Direct Billing

13.2.1 General

In connection with any Customer not billed on behalf of Contractor by City in connection with its water bills 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 and AB 939 Fee to City as consideration for this Agreement. Accordingly,

Contractor's bills shall not include separate itemization of a "franchise fee," "AB 939 Fee" or other similar designation. Billings shall be made monthly for Commercial Customers and may occur quarterly for Customers at Dwellings. 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.

13.2.2 Unoccupied Premises

During any time when a Premises is unoccupied for more than ninety (90) days, and Collection services are not provided by Contractor, Contractor shall not bill such Premises for Solid Waste Handling Service. The Customer at any such Premises shall be responsible to provide reasonable evidence to Contractor, pursuant to such guidelines as the City Manager is hereby authorized to develop, demonstrating the Premises was vacant for the period in question. Such Customers shall be entitled to a refund from Contractor for any amounts paid to Contractor for each thirty (30) day period during which the vacancy exists. Any Customer grievance regarding a claim that a Premises was unoccupied and received no service, and hence should not be billed for a given period pursuant to this Section, may be appealed by the Customer to the City Manager whose decision shall be final. It is the intent of the Parties that a Contractor shall not be entitled to charge for services which are not needed or used. Accordingly, the time frame set forth in this Section is not intended to suggest that Contractor may bill Customers for up to 90 days of service in situations in which no service is needed or used due to a vacancy.

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 Manager. 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 Manager approval. A deposit equal to the maximum rate for one 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 re-instituting 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 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 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 payments 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, 2010).

(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 its 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, 2010).

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 the 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 their scheduled mailing date.

13.6 Payment, Accounting Systems

13.6.1 Collection and Processing of Payments

13.6.1.1 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.

13.6.1.2 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 Customers as appropriate.

13.6.1.3 City Billing Limited

City has agreed to continue the practice established in the Original Agreement of allowing the costs charged by Contractor to its Customers for Solid Waste Handling Services to be collected in connection with its water bills. In the event City determines this system of billing is no longer necessary or desirable, including without limitation because it changes its system of billing for water services, or because of any challenge to the legality of the practice (such as a challenge under Article XIII or any other Section 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.

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 (the "Surety") as more fully defined below in the amount of One Million Dollars (\$1,000,000.00). The Surety may be comprised of either a performance bond or an irrevocable letter of credit, or a combination of both. If a 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 the 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 the 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 the 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, including specifically liquidated damages.

(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 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:

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).

2. The most recent editions of Insurance Services Office form number CA 00 01 1001 covering Automobile Liability, code 1 "any auto".

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

15.2 Minimum Limits of Insurance.

Contractor shall maintain in force for the term of this Agreement limits no less than:

1. Comprehensive General Liability: Ten Million Dollars (\$10,000,000.00) limit aggregate and Ten Million Dollars (\$10,000,000.00) 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.

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

3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000.00) per accident.

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

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.

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.

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.

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 Employers 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" to be Broadly Interpreted

For purposes of this Section the term "Assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to: (i) a sale, exchange or other transfer of substantially all of the Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of any membership interest of Contractor to a third party; (iii) 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; (iv) 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 (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of 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 (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

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 Manager, 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 Dollars (\$50,000.00) towards the Administrative Assignment Fee shall be paid to the 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 City consents to the Assignment.

(B) Contractor shall pay to City a transfer fee (the "Transfer Fee") in the following amount:

(1) if the request is dated prior to June 30, 2010, the fixed Transfer Fee shall be One Million Dollars (\$1,000,000.00);

(2) if the request is dated after June 30, 2010, and prior to June 30, 2011, the fixed Transfer Fee shall be Nine Hundred Thousand Dollars (\$900,000.00);

(3) if the request is dated after June 30, 2011, and prior to June 30, 2012, the fixed Transfer Fee shall be Eight Hundred Thousand Dollars (\$800,000.00);

(4) if the request is dated after June 30, 2012, and prior to June 30, 2013, the fixed Transfer Fee shall be Seven Hundred Thousand Dollars (\$700,000.00);

(5) if the request is dated after June 30, 2013, and prior to June 30, 2014, the fixed Transfer Fee shall be Six Hundred Thousand Dollars (\$600,000.00);

(6) if the request is dated after June 30, 2014, and prior to June 30, 2015, the fixed Transfer Fee shall be Five Hundred Thousand Dollars (\$500,000.00);

(7) if the request is dated after June 30, 2015, and prior to June 30, 2016, the fixed Transfer Fee shall be Four Hundred Thousand Dollars (\$400,000.00);

(8) if the request is dated after June 30, 2016, and prior to June 30, 2017, the fixed Transfer Fee shall be Three Hundred Thousand Dollars (\$300,000.00);

(9) if the request is dated after June 30, 2017, the fixed Transfer Fee shall be Two Hundred Thousand Dollars (\$200,000.00).

(C) 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.

(D) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on an scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local laws, including the Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

(E) The proposed assignee shall execute an agreement assuming all of Contractor's rights and liabilities under this Agreement.

SECTION 17. REVIEW OF SERVICES AND PERFORMANCE

17.1 Performance Hearing

(A) Commencing in or about July 2010, and on a biennial basis thereafter, City may hold a hearing to review Contractor's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Hearing"). The purpose of the Solid Waste Services and Performance Review Hearing is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, recycling, processing and disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and recycling and disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints and Contractor performance. City and

Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

(B) In addition to the Solid Waste Services and Performance Review Hearings City may hold in accordance with the immediately preceding paragraph, if the number of Customer complaints regarding Contractor's Solid Waste Handling Services are deemed by City to be excessive, City may, at any time (subject to the paragraph immediately below), hold a Solid Waste Services and Performance Review Hearing.

(C) City shall notify Contractor of its intent to hold a Solid Waste Services and Performance Review Hearing at least ninety (90) days in advance thereof. The notice will indicate whether the hearing will occur before City staff, the City Council, or such other body as the City may designate in the notice. Forty-five (45) days after receiving notice from City of a Solid Waste Services and Performance Review Hearing, Contractor shall submit a report to City which may contain such information as it wished to have considered, and shall contain the following:

(1) Current diversion rates and a report on Contractor's outreach activities for the past year.

(2) 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.

(3) Any specific plans for provision of changed or new services by Contractor.

(D) The reports required by this Agreement regarding Customer 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 at the Solid Waste Services and Performance Review Hearing. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Hearing, and any Customer may submit comments or complaints during or before the Hearing, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Hearing.

17.2 Performance Satisfaction Survey

If requested by the City, Contractor will create and conduct a survey at Contractor's expense in preparation for any Solid Waste Services and Performance Review Hearing held pursuant to Section 17.1. City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Solid Waste Services and Performance Review Hearing. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by the Contractor. The Survey will be distributed to a minimum of ten percent (10%) of the Customers, selected at random. Contractor shall obtain City's approval of the survey's 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 Solid Waste Services and Performance Review Hearing.

SECTION 18.
CITY'S REMEDIES; DEFAULT AND TERMINATION

18.1 Notice of Default

If the City Manager determines that Contractor has defaulted in the performance of any obligation hereunder, or that Contractor's performance pursuant to this Agreement with respect to such matters has not been in conformity with reasonable industry standards which are obtained in similar cities in Southern California, the provisions of this Agreement, the requirements of the Municipal Code, the requirements of the California Integrated Waste Management Board, including, but not limited to, requirements for source reduction and recycling or any other applicable Federal, State, or local law or regulation, including but not limited to the laws governing transfer, storage, or disposal of special wastes, or hazardous wastes, the City Manager may provide written notice to Contractor of such default. The City Manager may, in such written notice, set a reasonable time within which correction of such default shall be made. Unless a longer or shorter time is otherwise specified by the City Manager, a reasonable time for correction shall be thirty (30) days from the date such written notice is given.

18.2 Failure to Cure

If Contractor fails to correct, to the satisfaction of the City Manager, all deficiencies contained in the written notice thereof within the specified time, or if it is not reasonably possible to correct such deficiencies within the specified time, and Contractor fails to commence to correct or remedy such deficiencies within the specified time and diligently effect such correction or remedy thereafter, then the City Manager may refer the matter to the City Council for review, or review the matter himself.

18.3 Review by City Manager

If the City Manager reviews the matter and determines that Contractor has failed to properly or adequately cure any default set forth above, the City Manager, in the exercise of his discretion, may terminate this Agreement, or take such other action as he deems appropriate to pursue any remedy available to City. A decision or order of the City Manager shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk within five (5) business days of the date the notice of the City Manager's decision is given. The City Manager shall schedule any appeal for consideration by the City Council at the earliest feasible City Council Meeting following the date a Notice of Appeal is given to City.

18.4 City Council Review

In the event an appeal of a decision of the City Manager is filed, or if the City Manager refers the matter to the City Council without rendering a decision, the City Council shall set the matter for consideration before the City Council as a regular agenda item. In reviewing the matter the City Council may consider any information reported by the City Manager regarding the deficiencies, and shall give Contractor, or its representatives and any other interested person, a reasonable opportunity to be heard. The Council shall determine whether Contractor has failed to properly or adequately perform as set forth above, and if so whether to terminate the Agreement, or to pursue any other remedy available to City.

18.5 Performance During Reviews

Contractor's performance under this Agreement is not excused during any period of time when its performance is under review as set forth above, including at any time prior to a final decision as to whether such performance is deficient.

18.6 Termination without Right to Cure

The above right of termination as a result of Contractor's failure to timely cure any deficiency is in addition to City's right to terminate this Agreement without affording Contractor an opportunity to cure in circumstances where Contractor is determined by City to have materially breached this Agreement. City shall thus be afforded the right to terminate this Agreement in the event of any material breach hereof by Contractor without affording Contractor the right to cure as a result of any action, inaction or circumstance which is a legally defined material breach, or is defined herein as a material breach, and/or under any of the following circumstances which are hereby specifically defined as material breaches:

- (A) If Contractor practices, or attempts to practice, any fraud upon City.
- (B) If Contractor becomes insolvent, unable, or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.
- (C) If Contractor willfully violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement. So long as City's rights are not prejudiced during the pendency of any challenge to such orders or rulings by Contractor, Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no material breach of this Agreement shall be deemed to have occurred until a final ruling has been rendered.
- (D) If Contractor ceases to provide Solid Waste Handling Services, including Collection of Solid Waste and/or Recyclable Material, as required under this Agreement over all or any portion of the Franchise Area for a period of seven (7) days or more, for any reason not specified as a force majeure event hereunder.
- (E) If Contractor fails to materially comply with any insurance or indemnification requirement set forth in this Agreement.
- (F) If City is required to pay any fine or penalty, which is not paid on its behalf by Contractor or which Contractor fails, refuses, neglects or is unable to pay or indemnify City against, relating to any diversion or other requirement of AB 939.
- (G) If Contractor, or any management level employee of Contractor is convicted of a Criminal Matter (as defined herein). For purposes of this Section the term Criminal Matter refers to any felony or misdemeanor offense having any relationship to either Solid Waste Handling Services or public corruption (including, without limitation, bribery, conflict of interest related allegations, vote selling, or any similar type charges).

18.7 Liquidated Damages

18.7.1 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: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) that the services that are the subject of this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such specific breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

18.7.2 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, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor
Initial Here

TB

City
Initial Here

AB

18.7.3 Calculations for Liquidated Damages

Contractor agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below for each type of action warranting such damages:

18.7.3.1 Collection Reliability

(A) For each failure to commence service to a new Customer account within seven (7) days after order, which exceed five (5) such failures annually: \$150.00.

(B) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not Collected within the period described in this Agreement: \$150.00.

(C) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$150.00.

18.7.3.2 Collection Quality

(A) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright with lids secured which exceeds ten (10) such occurrences annually: \$150.00.

(B) For each occurrence of excessive noise or discourteous behavior which exceeds ten (10) such occurrences annually: \$250.00.

(C) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: \$250.00.

(D) For each occurrence of damage to private property in an amount in excess of \$1,000 which exceeds five (5) such occurrences annually: \$250.00.

(E) For each failure to clean up Solid Waste spilled from Containers, excepting amounts that are so nominal in nature that they would not reasonably be expected to be noticed by the driver of a Collection Vehicle, within 90 minutes that exceeds ten (10) such failures annually: \$150.00.

18.7.3.3 Customer Responsiveness

(A) For each failure to initially respond to a Customer complaint within one (1) business day, which exceeds five (5) such occurrences annually, and for each additional day in which the complaint is not addressed: \$250.00.

(B) For each failure to process Customer complaints to City as required herein, which exceeds five (5) such occurrences annually: \$250.00.

(C) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within twenty-four (24) hours of request from City: \$150.00.

18.7.3.4 Timeliness of Submissions to City

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

- (1) Monthly Reports: \$100.00 per day
- (2) Quarterly Reports: \$250.00 per day
- (3) Annual Reports: \$350.00 per day

18.7.4 Process for Assessment of Liquidated Damages

(A) 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. It is the desire of the parties to work together to avoid the imposition of liquidated damages and accordingly City will endeavor to timely communicate to Contractor any information that it receives which might give rise the imposition of liquidated damages in order to facilitate Contractor's ability to correct any deficiency, or prevent the recurrence of any conduct for which liquidated damages might eventually be imposed.

(B) 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.

(C) City may assess liquidated damages for each calendar day or event, as appropriate, that Contractor is determined to be liable in accordance with this Agreement.

18.7.5 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 any security required by this Agreement to obtain payment, deduct amounts due from funds it receives from the County Tax Assessor which would otherwise be due Contractor, and/or find Contractor in default and exercise its right to terminate this Agreement as set forth herein.

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 Manager 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 Manager. 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 Government Code Section 910 *et seq.*, within 30 days of the date of the occurrence giving rise to the claim for damages.

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 equipment 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 Section, 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 Manager 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 Section 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 Section 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 Section 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 Manager 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 the 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 universal waste item counts, types of recyclables including PET, HDPE, mixed plastics, aluminum, cardboard, mixed paper, sand, and concrete), as well as by customer type (i.e., single family, multi-family, commercial, roll-off, curbside, 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, services begun or discontinued during the reporting year, and the number of 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 Manager;

(D) A revenue statement, certified by the chief financial officer of Contractor, setting forth Franchise Fees and AB 939 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;

(E) A list of Contractor's officers and the members of its Board of Directors (if any), as well as a list identifying all Persons holding a membership interest in Contractor; and

(F) A list of stockholders or other equity investors holding five percent (5%) or more of the interest in Contractor 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, the California Integrated Waste Management Board, 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 Disaster Plan

Within 90 days of the Effective Date, Contractor shall prepare an updated draft disaster debris cleanup implementation plan that sets forth procedures for collection of debris following a major disaster such as an earthquake, fire or other similar event. The disaster plan shall address priorities for cleanup at critical facilities, procedures for reimbursement for costs, describe communication plans, list key contact persons, and provide maps showing proposed sites for stockpiling of disaster debris that cannot be transported to the landfill. Contractor shall coordinate the plan with City's emergency service teams. The draft plan shall be presented to the City Manager for consideration and approval. The final plan shall be distributed to those employees of Contractor and City who would have a role in implementing it in the event of a disaster.

23.6 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 Manager. The rates in effect at the time such dispute is submitted to the City Manager 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 Manager.

24.3 One Time Residential Premises Adjustments for Disposal and Processing Savings and Elimination of CARB Costs

The automated Collection services contemplated by this Agreement will result in disposal and processing cost savings to Contractor (as compared to costs incurred in connection with the Prior Agreement), and Contractor has agreed to pass such savings on to Customers at Residential Premises. In addition, the use of automated Collection Vehicles powered by natural gas will result in savings of costs related to so called CARB clean air technology which savings Contractor has also agreed to pass on to Customers at Residential Premises. Accordingly, on July 1, 2009 (the first Adjustment Date following the completion of the rollout of the automated Collection Vehicles) the maximum rate for the service component for Customers at Single Family Dwellings and Dwelling Units at Multi-Family Dwellings as referenced on Exhibit A shall be adjusted to: (1) eliminate the CARB Addition to the service component, and (2) reduce the maximum rate by an amount equal to the savings from disposal and processing noted above [which amount shall be determined after reviewing Contractor's actual savings and good faith negotiations between the parties for that purpose; provided, however, the amount of such reduction shall be at least \$.50/month.]. Once the forgoing adjustments occur, the adjusted maximum rate to the service component may be adjusted pursuant to Section 24.5 below. (By way of example, if the total disposal/processing savings is \$.50, then the maximum rate to be adjusted on July 1, 2009, by CPI would be \$17.19 which is arrived at as follows: \$17.80 - .11 (CARB) - .50 (savings) = \$17.19.)

24.4 Non-Residential Customer Adjustment for Elimination of CARB Costs

It is anticipated that Contractor's obligations pursuant to this Agreement will result in the elimination of all costs it incurs related to so called CARB clean air technology by July 1, 2010. Accordingly, on July 1, 2010 the maximum rate for the service component of all Customer categories and services types identified on Exhibit A shall be adjusted so as to be reduced by an amount equal to the "CARB Addition" associated with and still applicable to any such maximum rate. Once the forgoing adjustment occurs, the adjusted maximum rate to the service component may be adjusted pursuant to Section 24.5 below. Should Contractor determine that it will continue to incur CARB costs following July 1, 2010, it may request a discretionary adjustment to the maximum rates set forth on Exhibit A pursuant to Section 24.8 hereof to take such costs into account.

24.5 Annual Consumer Price Index Adjustments to Service Component

Commencing on July 1, 2009, 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 (the "Adjustment Dates"), by multiplying such service component by a percentage equal to the change in the Consumer Price Index ("CPI") for All Urban Consumers, CUURA421SA0 not seasonally adjusted, all items index (CPI-U) – Los Angeles County, Riverside County, Orange County average for the twelve (12) month period ending on the date of March 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 Manager's approval to do so. The City Manager 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.

24.6 Limitations to Annual CPI Adjustments to Service Component

Notwithstanding anything to the contrary in Section 24.5 above, the maximum annual adjustment occurring pursuant to Section 24.5 shall be limited by the provisions set forth below:

24.6.1 Six Percent (6%) Cap

The service component of the maximum rate may not be increased in any given year by more than six percent (6%) without regard to any higher increase which may otherwise be justified by the formula set forth in Section 24.5.

24.6.2 Compliance with Agreement

No increase to the maximum rates shall occur if the City Manager determines that Contractor did not fully comply with all terms of this Agreement in the Rate Year preceding the increase, including without limitation, provisions hereof relating to reporting, diversion, and Customer service standards.

24.7 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 no more often than annually on each Adjustment Date such that they reflect each Customers 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 has been arrived at by multiplying the Disposal Component Tonnage Basis for each applicable Customer and/ or service type by \$22.00 which is the per ton tipping fee charged by the Orange County Landfill System (where as of the Effective Date 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 Date, Contractor may request an adjustment to the maximum rates applicable to the Disposal Component set forth on Exhibit A pursuant to Section 24.8 hereof.

24.8 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 Section 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 Section Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. City shall review the Contractor's request and, in the City Council's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request. Contractor may not request an extraordinary increase in the maximum rates as a result of: changes in fees or taxes such as Social Security, disability or income tax; changes in the market value of Recyclables or processing costs for Recyclables or green waste; inaccurate estimates by the Contractor of its cost of operations; or costs of compliance with South Coast Air Quality Management District and Air Resource Board rules and standards for Collection Vehicles.

24.9 Grants

From time to time, Federal, State or local agencies including the City may provide to Contractor grants to assist in financing qualified programs provided by Contractor in the City (including, without limitation, grants for diversion programs and related equipment, alternative fuel vehicles and equipment, and Household Hazardous Waste Collection and Disposal). Contractor shall notify City upon receipt of any such grant funds that may be used to fund services provided pursuant to the terms of this Agreement. With the exception of grants already received by Contractor as of the Effective Date, and grants for either Household Hazardous Waste Collection and Disposal or Collection Vehicles, any funds received through grants for services in the City are intended to benefit City and its residents and businesses, and in essence are held by Contractor in trust on behalf of City. Accordingly, Contractor agrees that the total amount of compensation it receives from Customers hereunder, may be reduced by the amount of any such grant, unless the grant is used to pay for services in City. The City Council shall determine whether the reduction in Contractor's compensation shall be: (1) passed through to Customers designated by City as a reduction to maximum rates; (2) as an offset to the next increase to maximum rates requested by Contractor; (3) paid to City for use as City directs; or (4) applied in any combination of (1) through (3).

SECTION 25. IDENTIFICATION OF CONTRACTOR

Contractor has agreed to use the name "M-G Disposal Services, LLC" 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 ability to chose the location for the delivery and/or disposal of all Solid Waste (including Recyclable Material, green waste, 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 Manager 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 paragraph 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) arising out of, resulting from, and/or in any way connected with 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 Section 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 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 Section 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 Sections 25300 *et seq.*), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 *et seq.*), the California Porter-Cologne Act (California Water Code Section 13000 *et seq.*), and any and all amendments and regulations thereto, and any other Federal, State, regional or local environmental statutory or regulatory provision;

(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 Section 25501(o); any "hazardous substance," as that term is defined herein or under California Health & Safety Code Sections 25281(h), 25501(p), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "hazardous waste," as that term is defined herein and under Title 42, Section 6903(5) of the United States Code and under California Health & Safety Code Section 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 Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

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

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, roll-off, 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, multi-family, 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 Comprehensive Environmental Response, Compensation and Liability Act (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 Section shall survive the expiration of the Term of this Agreement.

28.3 Audits

28.3.1 Examination of Services

From time to time, anticipated to be at least once every other year, 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 three percent (3%), 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 5 times during the Term. The timing of such audits 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;
- Proper signage; and
- Graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results 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 90 days prior to the transition date, provide an updated list two 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 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, strikes or other labor disturbances lasting less than 14 days, explosion, natural disasters such as floods, earthquakes, landslides, and fires, or "other catastrophic events" which are beyond the reasonable control of Contractor. The term "other catastrophic events" does not include: (i) the financial inability of Contractor to perform; (ii) failure of Contractor to obtain any necessary permits or licenses from other governmental agencies; (iii) 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; or (iv) strikes or other labor disturbances lasting 14 days or longer.

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 providing the services required hereunder.

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. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Orange.

30.7 Amendment

This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939, as implemented by regulations of the California Integrated Waste Management Board ("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 Fullerton
 Attn: City Manager
 303 W. Commonwealth Avenue
 Fullerton, CA 92835

To Contractor: M-G Disposal Services, LLC.
 Attn: Area President
 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 Section. 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 as Exhibit C, Republic Industries, 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 Manager is designated as the City's authorized agent to take any action with regard to any matter, or enforce any right, set forth herein requiring action by the City.

30.15 Integrated Agreement

This Agreement contains the entire integrated agreement and understanding 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.

"City"

CITY OF FULLERTON

By: Don Bankhead
Don Bankhead, Mayor

ATTEST:

By: Beverley White
for Beverley White, City Clerk

APPROVED AS TO FORM:

By: A. Patrick Muñoz
A. Patrick Muñoz, Special Counsel

"Contractor"

M-G Disposal Services, LLC.

By: James T. Ambroso
James T. Ambroso
Its: Vice President

EXHIBIT A
MAXIMUM RATE SCHEDULE FOR SOLID WASTE HANDLING SERVICES:
ATTACHED

MAXIMUM RATES FOR SERVICES

		Base Maximum Rate For Service Component	Maximum Rate For CARB Addition to Service Component	Disposal Component Tonnage Basis	Maximum Rate For Disposal Component	Total: Maximum Rate To Customer
Customers at Single-Family Dwellings and Dwelling Units at Multi-Family Dwellings (Monthly)						
		\$15.76	\$0.11	0.0879	\$1.93	\$17.80
Multi-Family Dwelling Bin Rental (Monthly)						
Bin Rental	3 yd	\$36.12	n/a	n/a	n/a	\$36.12
Bin Rental	1.5 yd	\$26.24	n/a	n/a	n/a	\$26.24
Manure Bins (Monthly)						
1 x p/wk	1.5 yd	\$136.40	\$0.25	0.707	\$15.56	\$152.21
2 x p/wk	1.5 yd	\$199.34	\$0.50	1.4145	\$31.12	\$230.96
3 x p/wk	1.5 yd	\$262.30	\$0.75	2.122	\$46.68	\$309.73
4 x p/wk	1.5 yd	\$325.26	\$1.00	2.829	\$62.24	\$388.50
5 x p/wk	1.5 yd	\$388.25	\$1.25	3.5364	\$77.80	\$467.30
6 x p/wk	1.5 yd	\$451.22	\$1.50	4.2435	\$93.36	\$546.08
Commercial Refuse Carts (Monthly)						
1 x p/wk		\$20.47	\$0.25	0.145	\$3.20	\$23.92
2 x p/wk		\$40.92	\$0.50	0.291	\$6.40	\$47.82
3 x p/wk		\$61.41	\$0.75	0.4363	\$9.60	\$71.76
4 x p/wk		\$81.88	\$1.00	0.582	\$12.80	\$95.68
5 x p/wk		\$102.34	\$1.25	0.7272	\$16.00	\$119.59
6 x p/wk		\$122.85	\$1.50	0.8727	\$19.20	\$143.55
Commercial Bins (Monthly)						
1 x p/wk	3 yd	\$134.80	\$0.25	0.707	\$15.56	\$149.89
2 x p/wk	3 yd	\$195.84	\$0.50	1.4145	\$31.12	\$227.46
3 x p/wk	3 yd	\$257.59	\$0.75	2.122	\$46.68	\$305.02
4 x p/wk	3 yd	\$319.36	\$1.00	2.829	\$62.24	\$382.60
5 x p/wk	3 yd	\$381.15	\$1.25	3.5364	\$77.80	\$460.20
6 x p/wk	3 yd	\$442.92	\$1.50	4.2435	\$93.36	\$537.78
7 x p/wk	3 yd	\$515.98	\$1.75	4.951	\$108.92	\$626.65
1 x p/wk	1.5 yd	\$76.15	\$0.25	1.768	\$38.90	\$115.30
2 x p/wk	1.5 yd	\$90.49	\$0.50	3.5365	\$77.80	\$168.79
Commercial Mini Packer (Monthly)						
1 x p/wk	3 yd	\$279.69	\$0.25	2.1215	\$46.67	\$326.61
2 x p/wk	3 yd	\$495.95	\$0.50	4.2427	\$93.34	\$589.79
3 x p/wk	3 yd	\$712.24	\$0.75	6.364	\$140.01	\$853.00
4 x p/wk	3 yd	\$928.55	\$1.00	8.4855	\$186.68	\$1,116.23
5 x p/wk	3 yd	\$1,144.82	\$1.25	10.607	\$233.35	\$1,379.42
6 x p/wk	3 yd	\$1,360.65	\$1.50	12.728	\$280.02	\$1,642.17

Note: Any Commercial Customer with a service rate frequency less than 7x per week may add Sunday service for which an additional monthly Service Component may be added at a maximum rate of \$40.00 per month.

MAXIMUM RATES FOR SERVICES

		Base Maximum Rate For Service Component	Maximum Rate For CARB Addition to Service Component	Disposal Component Tonnage Basis	Maximum Rate For Disposal Component	Total: Maximum Rate To Customer
Special or Irregular Bins						
(Monthly - max. rate is per cubic yard)						
		\$44.51	\$0.50	0.2359	\$5.19	\$50.20
Each Extra "Dump"						
Commercial Bin	1.5 yd	\$31.00	n/a	0.0881	\$1.94	\$32.94
Commercial Bin	3 yd	\$35.30	n/a	0.177	\$3.89	\$39.19
Mini Packer	3 yd	\$40.27	n/a	0.5305	\$11.67	\$51.94
Manure Bin	1.5 yd	\$35.30	n/a	0.177	\$3.89	\$39.19
Temp Construction Bin	3 yd	\$84.44	n/a	0.177	\$3.89	\$88.33
Locking Bins						
Installation		\$70.00	n/a	n/a	n/a	\$70.00
Monthly		\$6.00	n/a	n/a	n/a	\$6.00
Commercial Rolloff Boxes						
(Monthly "Permanent Service")						
40 yd DOB		\$149.00	n/a	n/a	n/a	\$149.00
15 yd DEMO		\$155.00	n/a	n/a	n/a	\$155.00
20 yd Compactor		\$179.00	n/a	n/a	n/a	\$179.00
30 yd Compactor		\$195.00	n/a	n/a	n/a	\$195.00
40 yd Compactor		\$210.00	n/a	n/a	n/a	\$210.00
Additional Rolloff Charges						
Per Ton Processing Charge Applicable to all Commercial Rolloff Boxes		\$35.06	n/a	1	\$22.00	\$57.06
One-time Delivery Fee Applicable to all Commercial Rolloff Boxes		\$39.33	n/a	n/a	n/a	\$39.33
Relocation		\$49.00	n/a	n/a	n/a	\$49.00
Dead Run		\$49.00	n/a	n/a	n/a	\$49.00
Saturday Service - per pull		\$30.50	n/a	n/a	n/a	\$30.50
Temporary Construction Bins						
1 x p/wk	3 yd	\$140.66	\$0.50	0.707	\$15.56	\$156.72
2 x p/wk	3 yd	\$208.98	\$0.50	1.4145	\$31.12	\$240.60
3 x p/wk	3 yd	\$279.76	\$0.50	2.122	\$46.68	\$326.94
4 x p/wk	3 yd	\$344.16	\$0.50	2.829	\$62.24	\$407.10
5 x p/wk	3 yd	\$415.16	\$0.50	3.5364	\$77.80	\$493.46
6 x p/wk	3 yd	\$485.94	\$0.50	4.2435	\$93.36	\$579.80

Note: Any Commercial Customer with a service rate frequency less than 7x per week may add Sunday service for which an additional monthly Service Component may be added at a maximum rate of \$40.00 per month.

MAXIMUM RATES FOR SERVICES

		Base Maximum Rate For Service Component	Maximum Rate For CARB Addition to Service Component	Disposal Component Tonnage Basis	Maximum Rate For Disposal Component	Total: Maximum Rate To Customer
Temporary Bins (applicable to a single drop off and Collection)	3 yd	\$65.40	n/a	0.177	\$3.89	\$69.29
Temporary Service - Rolloff Boxes						
10 yd DOB per pull (overweight @ 2 tons)		\$179.69	n/a	0.923	\$20.31	\$200.00
40 yd DOB per pull (overweight @ 6 tons)		\$348.74	n/a	3.693	\$81.26	\$430.00
15 yd DEMO per pull (overweight @ 8 tons)		\$401.24	n/a	5.171	\$113.76	\$515.00
Overweight Rate (applicable on pro-rata basis to each ton over weight limit per pull)		\$35.06	n/a	1	\$22.00	\$57.06
Team Cleaning						
Bins		\$75	n/a	n/a	n/a	\$75
Rolloff Box		\$90	n/a	n/a	n/a	\$90
Commercial Bulky Item Service						
First two items		\$42	n/a	n/a	n/a	\$42
Each additional item		\$6	n/a	n/a	n/a	\$6

Note: Any Commercial Customer with a service rate frequency less than 7x per week may add Sunday service for which an additional monthly Service Component may be added at a maximum rate of \$40.00 per month.

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 Manager in order to be utilized in City.
- Each Refuse, Green Waste and Recycling Cart utilized by Contractor shall be labeled on the inside in English and Spanish and with graphics so as to: (1) explain/depict the items for which it is designated to Collect, and (2) identify the name of Contractor. In addition, each such Cart shall include information, in a format acceptable to City (such as hot stamping or stickers) regarding Contractor's Bulky Item service, and a phone number that Customers can call to access such service.
- 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 and have never previously been used for the Collection of Solid Waste; excepting that Carts which have been refurbished such that they are "like new" may be used so long as their condition is satisfactory as determined by the City Manager.
- 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

CORPORATE GUARANTY

THIS GUARANTY (the "Guaranty") is given as of the 1st day of March, 2009, and is made with reference to the following facts and circumstances:

A. M-G Disposal Services, LLC, a Delaware Limited Liability Company ("Contractor") is an affiliate of Republic Services, Inc., a Delaware corporation (Guarantor).

B. Contactor has entered a franchise agreement with the City with an Effective Date of March 1, 2009, entitled "Agreement Between The City of Fullerton and M-G Disposal Services, LLC, for Solid Waste Handling Services" (the "Franchise").

C. It is a requirement of the Franchise that Guarantor guarantee Contractor's performance of the Franchise, including any ongoing obligations in the "Prior Agreement" (as that term is defined in the Franchise).

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 Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against 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 non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or 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 Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

7. **Governing Law: Jurisdiction.** This Guaranty is and shall be deemed to be a contract entered into in, and pursuant to the laws of, the State of California and shall be governed and construed in accordance with the laws of California without regard to its conflicts of laws, rules for all purposes including, but not limited to, matters of construction, validity and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California and Guarantor consents to personal jurisdiction over it by such courts, 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.

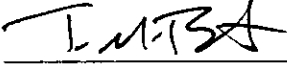
11. **Notices.** Notice shall be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City: City Manager
 City of Fullerton
 303 W. Commonwealth Avenue
 Fullerton, CA 92835

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

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT (this "Termination"), effective March 1, 2009 (the "Effective Date"), by and between the CITY OF FULLERTON (the "City"), and REPUBLIC WASTE SERVICES OF SOUTHERN CALIFORNIA, LLC, a Delaware LLC ("Republic Waste").

RECITALS

A. Republic Waste was originally Taormina Industries, Inc., a California Corporation, which merged into Taormina Industries, LLC, a Delaware LLC, then changed its name to Republic Waste. Republic Waste is a wholly owned subsidiary of Republic Services, Inc., a Delaware corporation ("Guarantor"). M-G Disposal Services, LLC, a Delaware Limited Liability Company ("M-G"), is also a wholly owned subsidiary of Guarantor.

B. City previously entered a franchise agreement for Solid Waste Handling Services with M-G dated July 1, 1999 (the "Original Agreement"). The Original Agreement required all Solid Waste collected by M-G to be delivered to that certain transfer/processing facility known as the Taormina Facility (which facility is wholly owned by M-G's parent company, the Guarantor hereto), pursuant to that certain Materials Recovery Facility Services Agreement effective July 1, 1994 between the City and Taormina Industries, Inc., as amended by that certain First Amendment to Materials Recovery Facility Services Agreement dated December 31, 1999 by and between the City and Taormina Industries, LLC, (collectively, the "Taormina Agreement").

C. The Taormina Agreement's effective term is fifteen (15) years, expiring on June 30, 2009.

D. City and M-G are entering into a new Agreement between City and M-G for Solid Waste Handling Services (the "M-G Agreement"), effective March 1, 2009. It is the desire of the City, M-G and Republic Waste by entering the M-G Agreement and this Termination to supersede the Original Agreement and the Taormina Agreement, except with respect to certain continuing obligations as more fully set forth herein. The City therefore now desires to terminate the Taormina Agreement with Republic Waste.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements set forth in this Termination, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Termination of Taormina Agreement.** The City and Republic Waste hereby consent to the termination of and do hereby terminate any and all rights, obligations or liabilities of any nature under the Taormina Agreement as of the Effective Date, agree to waive any and all rights

under the Taormina Agreement, and agree to release and hold the City harmless from any of the City's obligations thereunder; provided, however, nothing contained in this provision is intended to or shall relieve Republic Waste from any Continuing Obligations (as defined below).

2. **Continuing Obligations.** Nothing in this Termination is intended to or shall relieve Republic Waste from any obligations existing under the Taormina Agreement pertaining to insurance, indemnification, or other legal obligations to City (as opposed to obligations to provide service pursuant to the terms thereof), or from any obligation set forth in the Taormina Agreement which is called out as surviving the termination thereof, and all such obligations, including but not limited to, indemnity obligations pursuant to Article VIII, specifically those indemnification obligations relating to Environmental Laws (as defined below), insurance obligations pursuant to Article IX, general liability, and environmental liabilities including AB 939, shall survive the termination of the Taormina Agreement and any related agreement, including the Original Agreement ("the Continuing Obligations").

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §2601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the 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.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

3. **Acknowledgment by Guarantor.** Guarantor acknowledges and agrees to this Termination. Guarantor furthermore acknowledges that certain agreement entitled Guaranty by Guarantor of Taormina Industries, LLC's Performance Under the Agreement with the City Entered Into and Effective as of July 1, 1994, as Amended December 31, 1999 (the "Guarantee Agreement"), effective July 1, 1999 and incorporated by reference into the Taormina Agreement, survives this Termination. Guarantor continues to act as guarantor of Republic Waste's performance of all Continuing Obligations.

4. **Miscellaneous.**

- a. **Entire Agreement.** This Termination constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understandings, agreements or representations by or between the parties, written or oral, to the extent they relate in any way to the subject matter hereof.
- b. **Amendments and Waivers; Severability.** This Termination may not be amended or modified, and no provisions hereof may be waived, without the written consent of the City and Republic Waste. No action taken pursuant to this Termination shall be deemed to constitute a waiver by the party taking such action of compliance with any

representation, warranty, covenant or agreement contained herein. The waiver by any party hereto of a breach of any provision of this Termination shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.


- c. Governing Law. This Termination shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of California, without giving effect to the principles of conflicts of laws thereunder which would specify the application of the law of another jurisdiction.
- d. Injunctive Relief; Specific Performance. The parties agree that the City and Republic Waste will suffer irreparable harm in the event of a failure of any party or its successors and assigns to perform any of the obligations under this Termination, and that money damages would be impossible to calculate, and could not adequately compensate for such nonperformance. In addition to any other relief to which it may be entitled, a party shall have the right to preliminary, temporary and/or permanent injunctive relief, and to specific performance, for any breach or threatened breach of this Termination, without proof of actual damages.
- e. Counterparts. This Termination may be executed, including by facsimile signature, in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

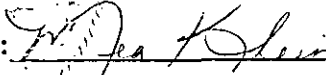
[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Termination so as to be effective on March 1st 2009.

CITY

CITY OF FULLERTON


By: 
Name: Don Bankhead
Title: Mayor

Attest: 
for: Beverly White

Approved as to Form: 

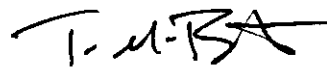
REPUBLIC WASTE

REPUBLIC WASTE SERVICES OF
SOUTHERN CALIFORNIA, LLC

By: 
Name: James T. Ambroso
Title: Vice President

GUARANTOR

REPUBLIC SERVICES, INC.

By: 
Name: Tim M. Benter
Title: Vice President & Assistant Secretary