



**SOLID WASTE ISSUES  
STANDING COMMITTEE MEETING**  
January 12, 2017

City Hall  
**CONFERENCE ROOM 1**  
130 Cremona Drive, Suite B  
Goleta, California

**2:00 P.M.**

Councilmember Aceves  
Mayor Pro Tempore Kasdin  
Michelle Greene, City Manager  
Tim Giles, City Attorney  
Rosemarie Gaglione, Public Works Director  
Everett King, Environmental Services Coordinator

- I. Potential Franchise Agreement Amendments needed to accommodate the recently executed Resource Recovery Project Materials Delivery Commitment & Processing Services Agreement between County of Santa Barbara and City of Goleta
- II. Update on State Water Resources Control Board's Trash Amendment

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## MEMORANDUM

DATE: January 10, 2016

TO: Councilman Aceves  
Mayor Pro Tempore Kasdin

FROM: Everett King, Environmental Services Coordinator

SUBJECT: Potential Amendments to the Franchise Agreement for Solid Waste Handling Services between City of Goleta and MarBorg Industries

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The recently approved Resource Recovery Project Material Delivery Commitment and Processing Services Agreement between the County of Santa Barbara and the City of Goleta (MDA) commits the City to the Tajiguas Resource Recovery Project (Project).

The MDA commits the City's solid waste stream to the Project for a 20 year term at a tipping fee that is substantially higher than those currently charged by the County for disposing refuse at the Tajiguas Landfill, and for handling and processing of residential source separated commingled recyclables (recyclables). The current tipping fees for refuse and recyclables will be increased effective July 1, 2017, and again on July 1, 2018 in order to gradually step up those tipping fees to the anticipated Acceptable Material Charge (AMC) that will be applied to both waste streams once the Project becomes operational, currently anticipated to occur in 2019. These step increases will also generate surplus revenues for the purpose of establishing the Jurisdictional Rate Stability Fund (Fund), which is intended to moderate swings in commodity prices, and to potentially subsidize future collection rate increases.

In order to accommodate these increases, and to generate the necessary surplus to cover the City of Goleta's proportionate contribution to the Fund, changes to the current collection rate calculation methodology outlined in the Franchise Agreement for Solid Waste Handling Services between City of Goleta and MarBorg Industries (FA), as they relate to the calculation of residential and commercial solid waste collection rates, may be requested by MarBorg.

Staff has drafted a Professional Services Agreement with Mr. David Davis, d.b.a. MSW Consultants Inc., to assist the City in reviewing the current rate setting methodology, and to make recommendations as to the best approach to amending the FA such that its provisions align with the Project's needs and the City's obligations under the MDA. Mr. Davis assisted the City in negotiating the current FA, and in developing the rate setting methodology outlined therein. An initial meeting with Mr. Davis is being

scheduled for mid-January 2017 to review the issues and to map out a process and schedule for negotiating any potential amendments to the Franchise Agreement such that those changes can be implemented in advance of Council's approval of FY 17/18 Solid Waste Collection Rates, effective July 1, 2017.

## **TIPPING FEE INCREASES**

Effective July 1, 2017, the refuse tipping fee at the Tajiguas Landfill will increase from the current \$87/ton to \$99/ton, and the commingled recyclables tipping fee will increase from the current \$30/ton to \$99/ton.

Then again, on July 1, 2018, those tipping fees will increase from \$99/ton to \$110/ton, which is the anticipated initial AMC for the Project once operations commence. During the November 1, 2016 presentation to Council, the projected tipping fee to be implemented on 7/1/18 was noted to be not greater than \$120/ton. Subsequent to that hearing, the final tipping fee effective on that date has been set at \$110/ton. The impact of these increases to collection rates is discussed in greater detail below.

Following that, the AMC will be annually adjusted to account for inflation.

Anticipated Tipping Fee increases

<b>Date</b>	<b>Refuse</b>	<b>Recyclables</b>
Current	\$87/ton	\$30/ton
7/1/17	\$99/ton	\$99/ton
7/1/18	\$110/ton	\$110/ton

When the City negotiated the current FA, the tipping fee that the County charged for accepting residential source separated commingled recyclables at the South Coast Recycling and Transfer Station (SCRTS) was \$5/ton. Initial residential and commercial collection rates under the FA incorporated that cost.

The AMC that will be charged by the Project will be a unified fee that applies to both the delivery of refuse and recyclables. In anticipation of that, the County increased the tipping fee for accepting recyclables from \$5/ton to \$30/ton, effective July 1, 2016. This tipping fee increase for recyclables was not reflected in the FY 16/17 collection rate increase approved by Council on June 21 2016, due to the current methodology which looks at tipping fee increases *in arrears*.

More problematic is a lack of any defined method for incorporating such an increase in our current rate setting methodology, which only accounts for increases in the refuse tipping fee. Because the disposal costs of the collection rates are merely a pass through from the rate payer to the County, as a result of this increase, MarBorg is paying \$25/ton more when delivering recyclables to the County, than it is currently compensated for through the collection rates.

The impact of increasing the City's residential and commercial collection costs to account for the increase in recyclables tipping fee from the \$5/ton currently assumed in

our rate structure, to \$99/ton effective July 1, 2017, and will have a yet to be determined, but significant impact to FY 17/18 collection costs.

## **RATE SETTING METHODOLOGY**

Under the FA, residential and commercial solid waste collection rates are composed of three (3) different cost categories: collection costs, disposal/processing costs, and regulatory fees. Collection costs consist of fixed and variable costs associated with the physical collection and transport of solid wastes to a processing and/or disposal facility. Disposal/processing costs are those tipping or gate fees charged, typically on a per ton basis, for the acceptance of waste for processing and/or disposal, and are a pass through cost to the rate payer. Regulatory fees include the 5% Franchise Fee and 8% Solid Waste Program Fees and are calculated based on the Hauler's adjusted gross monthly revenue derived from franchise collection operations in the City. The Franchise Fee goes into the City's General Fund, and the Solid Waste Program Fee funds the City's Solid Waste Fund.

Collection rates may be adjusted by the Hauler annually, effective July 1 of each year, to reflect changes in any of the three cost categories, up to the Maximum Rate as defined in the FA. The Maximum Rate for any specific service level is calculated following prescribed, weighted adjustments as defined in the FA. The collection and disposal costs (67% and 33% respectively) are multiplied by the percentage changes in the CPI and the Tajiguas refuse tipping fee to arrive at weighted adjustment percentages.

The FA allows collection costs to be adjusted to reflect inflationary increases, based upon the Consumer Price Index as prepared and published by the U.S. Department of Labor's Bureau of Labor Statistics. The change in the Los Angeles-Riverside-Orange County Consumer Price Index (CPI).

The disposal cost category may be adjusted to reflect changes in the tipping fee charged by the County of Santa Barbara to accept refuse at the Tajiguas Landfill. The disposal component adjustment factor is based on the percentage change in the tipping fee between the twelve (12) month averages of the two (2) prior calendar years.

The current methodology for incorporating tipping fee increases into residential and commercial collection rates, which takes the difference in the average tipping fees from the previous two calendar years, results in a three year lag time for a tipping fee change to fully take effect, and is unlikely to generate the necessary revenue to charge the proposed Fund within the required time-frame.

## **IMPACTS TO GOLETA RATE PAYERS**

The anticipated increase in the refuse tipping fee from the current \$87/ton to \$99/ton, effective 7/1/17, represents a \$12/ton or 13.79% increase. However, due to the weighting factor applied to disposal costs in the current rate calculation methodology, the effective increase to the rate payer is 4.55%.

Similarly, the anticipated increase in the refuse tipping fee from \$99/ton to \$110/ton effective 7/1/18, represents an \$11/ton or 11.11% increase, with a weighed increase of 3.67%.

The impact to residential and commercial rate payers of this increase alone, excluding consideration of the need to increase the recyclables tipping fee or any inflationary adjustment of the collection portion of the rates is shown in the following tables, with the dollar per month increase for selected service levels highlighted:

Service Level	Monthly Maximum Solid Waste Collection Rates			
	2016-2017	2017-2018	\$ Change	% Change
32-gallon	\$26.09	\$27.28	\$1.19	4.55%
64-gallon	\$29.22	\$30.55	\$1.33	4.55%
96-gallon	\$33.76	\$35.30	\$1.54	4.55%
1 3-yd bin, collected 3x/wk	\$570.67	\$596.64	\$25.87	4.55%

Service Level	Monthly Maximum Solid Waste Collection Rates			
	2017-2018	2018-2019	\$ Change	% Change
32-gallon	\$27.28	\$28.52	\$1.24	3.67%
64-gallon	\$30.55	\$31.94	\$1.39	3.67%
96-gallon	\$35.30	\$36.91	\$1.31	3.67%
1 3-yd bin, collected 3x/wk	\$596.64	\$623.79	\$27.15	3.67%

Quantifying the impact to collection rates by raising the recyclables tipping fee is harder to assess, since the current rate model does not provide an input for this factor. An increase from the current tipping fee of \$30/ton to \$99/ton, effective 7/1/17 represents a \$69/ton or 230% increase, with a weighted increase of 75.9%.

As noted earlier, the current collection rates approved by Council effective 7/1/16 did not account for the increase in the recyclables tipping fee from \$5/ton to \$30/ton.

Collection rates in effect in the surrounding County Franchise Zone 2, may provide an insight into what the impact of factoring in the recyclables tipping fee increase might have on Goleta collection rates. Zone 2 rates are similar to Goleta rates, and the County has estimated the total monthly impact per rate payer from the combined increases to the refuse and recyclables tipping fee, excluding inflationary adjustment to the collection portion of the rates, to be approximately \$5.00/month. Staff expects a similar outcome for Goleta collection rates, once a methodology for including the recyclables tipping fee increases into our rate model is developed.

Finding a reasonable method of accounting for this increase in our current rate structure and calculation methodology will be a major part of what MSW Consultants will be working on.

## **APPLICATION OF FUND 211 FUND BALANCE TO SUBSIDIZE FUTURE COLLECTION RATE INCREASES**

As noted above, one of the reasons for phasing tipping fee increases over the next two fiscal years is to generate surplus revenues that would be placed in a Jurisdictional Rate Stability Fund. The purpose of the Rate Stability Fund is two-fold; to moderate commodity market volatility such that tipping fee increases are only implemented

annually, and to potentially subsidize future tipping fee increases, thereby moderating collection rate increases. Once the Fund is initially charged, it would be maintained, and any use of the Fund replaced, through revenues gained from the sale of recyclable materials.

The Fund target amount is \$3 million. The City of Goleta contributes 14.83% of the tonnage currently disposed at the Tajiguas landfill. Therefore the City's proportionate contribution "share" to the Fund is approximately be \$444,900. Split between rate increases over the next two fiscal years that amounts to \$222,450 per year.

One option for meeting this obligation would be to apply Fund 211 Fund Balance. Fund 211 Fund Balance could also be applied to future collection rate increases as a means of subsidizing AMC increases, and lessening the impacts to rate payers. The cost of each dollar reduction in the AMC would need to be calculated. For example, if the annual cost of a \$1/ton reduction in a future proposed AMC increase was calculated to be \$89,000, a proposed \$2/ton increase in the AMC could be fully subsidized for \$178,000, or half-subsidized for \$89,000. This would reduce the impact of that AMC increase to collection rates by 100% or 50% respectively. The subsidy would then be paid to either MarBorg (as a pass through) or to the County directly, in order to cover the difference in the AMC, and a lower AMC amount plugged into the calculation of collection rates.

**FRANCHISE AGREEMENT  
FOR SOLID WASTE HANDLING  
SERVICES**

**BETWEEN  
CITY OF GOLETA  
AND  
MARBORG INDUSTRIES**



**Effective Date: April 5, 2011; Resolution No. 11-\_\_**

**Franchise Services Beginning: July 1, 2011**

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## **FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES**

This **FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES** ("Agreement") is entered into this 5th day of April, 2011, by and between the **CITY OF GOLETA ("City")**, a California municipal corporation, and **MARBORG INDUSTRIES ("Contractor")**, a California corporation.

### **RECITALS**

**WHEREAS**, Article XI, Section 7 of the California Constitution authorizes cities to protect the public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (the "Act"), California Public Resources Code Section 40000, *et seq.*, established a solid waste management process requiring cities and other local jurisdictions to implement integrated waste management programs, which maximize the use of all feasible source reduction, recycling and composting options in order to reduce the amount of solid waste that must be disposed of in landfills; and

**WHEREAS**, the Act provides that certain aspects of solid waste handling are of local concern, including, but not limited to, frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste handling services; and

**WHEREAS**, the Act grants cities and other local jurisdictions the authority to provide solid waste handling services, whether the services are to be provided by means of nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise, which may be granted, with or without competitive bidding, under terms and conditions prescribed by resolution or ordinance of the governing body of the local jurisdiction; and

**WHEREAS**, on February 1, 2002, City incorporated and the City Council adopted Ordinance 02-01 entitled "An Ordinance of the City Council of the City of Goleta, California, Adopting by Reference the Santa Barbara County Code and Other Relevant Non-Codified Santa Barbara County Ordinances as City Ordinances," which code and ordinances remain in effect except as expressly repealed or amended by City; and

**WHEREAS**, City is obligated to protect the public health and safety of the residents and businesses of City and solid waste handling services shall be provided in a manner consistent with the exercise of City's obligations for the protection of public health and safety; and

**WHEREAS**, Chapter 8.10 of Title 8 of the Goleta Municipal Code implements Article XI, Section 7 of the California Constitution and the Act; and

**WHEREAS**, upon incorporation, City became the successor in interest of the County of Santa Barbara (the "County") for all agreements within City's jurisdiction; and

**WHEREAS**, in 1996, the County approved exclusive franchises to be effective July 1, 1997 for solid waste handling services with certain privately-owned companies to provide solid

waste handling services to residents and businesses located in five designated collection zones in the unincorporated areas of the County, including the following two agreements:

1. An "Agreement Between the County of Santa Barbara and Browning Ferris Industries of California, Inc., for Exclusive Solid Waste, Recyclables and Organics Collection and Transportation To Disposal and Processing Facilities and Organics Sites for Zone Two" on December 10, 1996 (the "County-Browning Ferris Franchise Agreement"); and
2. An "Agreement Between the County of Santa Barbara and Marborg Industries, Inc., for Exclusive Solid Waste, Recyclables and Organics Collection and Transportation to Disposal and Processing Facilities and Organics Sites for Zone Three" on November 22, 1996 (the "County-Marborg Franchise Agreement"); and

**WHEREAS**, within City boundaries, Zone Two generally includes those properties that are North of Hollister Avenue and Zone Three generally includes those properties that are South of Hollister Avenue; and

**WHEREAS**, both the County-Browning Ferris Franchise Agreement and the County-Marborg Franchise Agreement were for a term of ten years, from July 1, 1997 to June 30, 2007, with an option of an initial four-year extension of the term, to July 1, 2011, to be evaluated in June 2004; and

**WHEREAS**, the County-Browning Ferris Franchise Agreement has subsequently been amended and/or assigned as follows:

1. On September 23, 1997, the County authorized the assignment to BFI Waste Systems of North America, Inc. (the "County-BFI Franchise Agreement"); and
2. On November 7, 2000, the County amended and restated the County-BFI Franchise Agreement and the County authorized the merger of Browning Ferris Industries of California, Inc. with Allied Waste Industries, Inc. constituting an assignment of the County-BFI Franchise Agreement to BFI Waste Systems of North America, Inc. as wholly-owned by Allied Waste Industries, Inc. (the "County-Allied Waste Franchise Agreement"); and

**WHEREAS**, the County-Marborg Franchise Agreement has subsequently been amended as follows:

1. On April 25, 2000, the County amended and restated the County-Marborg Franchise Agreement, which included two additional four-year extensions of the term, from July 1, 2011 to June 30, 2015 and July 1, 2015 to June 30, 2019, upon satisfaction of certain requirements (the "Extended County-Marborg Franchise Agreement"); and

**WHEREAS**, upon incorporation of the City in 2002, the County continued to provide solid waste handling services to those properties within City boundaries through the management of the County-Allied Waste Franchise Agreement and the Extended County-Marborg Franchise Agreement and according to the County-designated Zones 2 and 3 within City boundaries; and

**WHEREAS**, in 2004, the County approved the initial four-year extension of both the County-Allied Waste Franchise Agreement and the Extended County-Marborg Franchise Agreement to extend the expiration dates of the agreements from June 30, 2007 to June 30, 2011; and

**WHEREAS**, on July 5, 2005, City and the County entered into a “Joint Exercise of Powers Agreement Between the City of Goleta and the County of Santa Barbara Establishing the Santa Barbara County Regional Integrated Waste Management Reporting Authority” (the “Regional Reporting Authority Agreement”), which created the Santa Barbara County Regional Integrated Waste Management Reporting Authority (the “Regional Reporting Authority”) pursuant to the Joint Exercise of Powers Act, California Government Code Sections 6500, *et seq.*, to act as and have the powers of a “Regional Agency” pursuant to the Act, specifically California Public Resources Code Sections 40970, *et seq.*; and

**WHEREAS**, also on July 5, 2005, City and County entered into a “Solid Waste Community Program and Household Hazardous Waste Drop-Off Agreement Between The City of Goleta and The County of Santa Barbara” (the “HHW Drop-Off Agreement”) to provide for the collection, transportation, recycling and disposal of household hazardous waste and the reporting of such, as well as the managing and administration of household hazardous waste drop-off programs, pursuant to the Act and in compliance with the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. Sections 6901, *et seq.*, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. Sections 9601, *et seq.*, which the HHW Drop-Off Agreement was subsequently amended on February 7, 2008; and

**WHEREAS**, also on July 5, 2005, management of the County-Allied Waste Franchise Agreement and the Extended County-Marborg Franchise Agreement was transferred to City through the following amendments of the agreements:

1. The “City of Goleta Amendment to Amended and Restated Agreement Between the County of Santa Barbara and BFI Waste Systems of North America Inc. For Exclusive Solid Waste, Recyclables and Organics Collection and Transportation To Disposal and Processing Facilities and Organics Sites for Zone Two” (the “Prior City Franchise Agreement with Allied Waste”); and
2. The “City of Goleta Amendment to Amended and Restated Agreement Between the County of Santa Barbara and Marborg Industries For Exclusive Solid Waste, Recyclables and Organics Collection and Transportation To Disposal and Processing Facilities and Organics Sites for Zone Three” (the “Prior City Franchise Agreement with Marborg”); and

**WHEREAS**, the Prior City Franchise Agreement with Allied Waste has been performed by Allied Waste Services of Santa Barbara, a division of Republic Services, Inc. (“Allied Waste Services”), has not been subsequently amended and will expire on June 30, 2011; and

**WHEREAS**, the Prior City Franchise Agreement with Marborg has been performed by Contractor, has not been subsequently amended and would expire on June 30, 2019, provided that Contractor satisfies certain requirements for the two additional four-year extensions; and

**WHEREAS**, in light of the upcoming expiration of the Prior City Franchise Agreement with Allied Waste, the City Council received and reviewed unsolicited proposals from both Allied Waste Services and Contractor for the provision of solid waste handling services upon expiration of the Prior Franchise Agreement with Allied Waste for the properties covered by that agreement; and

**WHEREAS**, on March 16, 2010, after review of the unsolicited proposals, the City Council directed staff to negotiate with Contractor for an exclusive franchise for solid waste handling services throughout the entire service area of the City, including both Zone 2 and Zone 3; and

**WHEREAS**, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of solid waste, including California Public Resources Code Section 40000, *et seq.*, RCRA, CERCLA, and the Carpenter-Presley-Tanner Hazardous Substance Account Act ("HSAA"), California Health and Safety Code Sections 25300, *et seq.*; and

**WHEREAS**, City and Contractor desire to leave no doubts as to their respective roles and to make it clear that by entering into this Agreement, City is not thereby becoming a "generator" or an "arranger" as those terms are used in the context of CERCLA § 107(a)(3) and that it is Contractor, an independent entity, and not City, which will collect, transport and dispose of solid waste (which may contain small amounts of consumer products with the characteristics of hazardous substances) in City; collect, transport, and recycle and/or compost green waste and recyclable solid waste collected in City; and

**WHEREAS**, City, by this Agreement, does not instruct Contractor on its collection methods, nor supervise the collection of solid waste; and

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

**WHEREAS**, City may have opportunities to cooperate regionally with other public entities to seek environmentally superior methodologies for disposal of solid waste generated in the region; and

**WHEREAS**, in order to assure a sufficiently significant and steady stream of solid waste to make any such methodologies economically viable, it will be necessary for local jurisdictions in the region, including City, to commit their respective solid waste streams to be transported to a designated disposal site; and

**WHEREAS**, City shall retain the right to direct the disposal site of the solid waste stream to maintain the flexibility to achieve these significant regional environmental benefits, but such right does not put City in control of Contractor for purposes of performing this Agreement; and

**WHEREAS**, pursuant to the direction of the City Council, City staff has met with Contractor regularly to negotiate the terms of this Agreement and City and Contractor have negotiated this Agreement in good faith; and

**WHEREAS**, Contractor represents and warrants to City that it has the experience, responsibility and qualifications to provide consistent and reliable solid waste handling services throughout City, conduct recycling programs to achieve diversion rates sufficient to achieve diversion goals of City, to provide City with information sufficient to meet City's reporting requirements under the Act, to assist City in meeting City's other requirements under the Act, to collect, transport and dispose of solid waste in a safe manner which will minimize the adverse

effects of collection vehicles on air quality and traffic and has the ability to indemnify City against liability under CERCLA; and

**WHEREAS**, pursuant to the Act, specifically California Public Resources Code Section 40059(a)(2), and Chapter 8.10 of Title 8 of the Goleta Municipal Code, City has determined that, pursuant to the foregoing recital, the public health, safety, and well-being require that an exclusive franchise be awarded to Contractor for the provision of solid waste handling services; and

**WHEREAS**, Contractor is ready, willing and able to perform the services which this Agreement requires and City and Contractor desire Contractor to provide solid waste handling services to the entire service area of City; and

**WHEREAS**, in order for Contractor to provide solid waste handling services to the entire service area of City, this Agreement shall not only be for the provision of solid waste handling services upon expiration of the Prior Franchise Agreement with Allied Waste for the properties covered by that agreement, but City and Contractor also agree and desire that this Agreement shall supersede and replace the Prior Franchise Agreement with Marborg; and

**WHEREAS**, Contractor accepts this Agreement as conferring an exclusive franchise for the provision of solid waste handling services for the entire service area of City and as a result Contractor voluntarily forfeits any rights and/or privileges conferred under the Prior Franchise Agreement with Marborg.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

## **ARTICLE 1 DEFINITIONS AND CONTRACT INTERPRETATION**

### **Section 1.1 Definitions.**

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth in the definitions contained in Exhibit A.

### **Section 1.2 Interpretation.**

#### **1.2.1 Conflict of Definitions.**

Whenever any term used in this Agreement has been defined by Chapter 8.10 of Title 8 of the Goleta Municipal Code and/or the Act, specifically California Public Resources Code Sections 40100, *et seq.*, the definitions in the Goleta Municipal Code and the Act shall apply unless the term is otherwise defined in Exhibit A. In the event of a conflict between the definition of a term in the Goleta Municipal Code and/or the Act and in this Agreement, the definition in this Agreement shall prevail.

#### **1.2.2 Gender.**

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

### **1.2.3 Headings, Font.**

Any captions or headings following the Attachment, Exhibit, Section, Subsection, paragraph and Article numbers and preceding the operative text of this Agreement are for convenience of reference only and do not control or affect scope, intent, meaning, construction, interpretation or effect of this Agreement. Any underlined, italicized, bold-faced, upper captioned or other font styles are for ease of reading and contract administration only and do not in any way imply relative importance or unimportance of any provision of this Agreement.

### **1.2.4 References to this Agreement.**

References to Articles, Sections, Subsections and Exhibits refer to this Agreement, unless otherwise specified.

### **1.2.5 Specific Not Limitation on Generalities.**

The mention of any specific obligation under this Agreement may not be construed to limit or restrict any general liability or duty imposed upon Contractor elsewhere in this Agreement or under law.

### **1.2.6 Ambiguities, Inconsistencies and Conflicts.**

If any provision contained in the text of Article 1 through Article 23 and in any Exhibits to this Agreement are ambiguous, inconsistent or conflict, the provisions of the text in Article 1 through Article 23 shall govern.

## **ARTICLE 2 GRANT OF FRANCHISE; SCOPE OF AGREEMENT**

### **Section 2.1 Binding Agreement.**

In consideration of the mutual promises contained herein, City and Contractor agree to be bound by and comply with all of the obligations and requirements of this Agreement.

### **Section 2.2 Grant of Franchise; Scope.**

#### **2.2.1 Exclusive Franchise.**

Through this Agreement, City grants to Contractor the exclusive right and privilege, except as provided in Section 2.3, to Collect the following materials within the Service Area, as set forth in Article 5:

- a. Solid Waste generated at Residential Premises, Commercial Premises and City Facilities Premises; and
- b. Source Separated Recyclables generated at Residential Premises, Commercial Premises and City Facilities Premises; and
- c. Source Separated Green Waste generated at Residential Premises.

## **Section 2.3 Limitations on Scope of Exclusive Franchise.**

### **2.3.1 Contractor Approval Not Required.**

City may permit the Collection, Recycling and/or Disposal of any of the following by Persons other than Contractor without seeking or securing approval from Contractor:

- a. Solid Waste, Recyclables, and Green Waste which are transported personally by the Owner or Occupant of the Residential Premises or Commercial Premises at which they are generated to a Disposal Site or a Transfer and Processing Facility; and
- b. Recyclables and organic wastes which are Source Separated by the Generator and sold or donated, including donations to youth, civic, or charitable organizations; and
- c. Recyclable beverage containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, California Public Resources Code Sections 14500, *et seq.*; and
- d. Animal waste and remains from slaughterhouse or butcher shops, grease waste, and used cooking oil; and
- e. By-products of sewage treatment including sludge, sludge ash, grit and screenings; and
- f. Hazardous Waste and Household Hazardous Waste; and
- g. Source Separated E-Waste and Source Separated U-Waste; and
- h. Green Waste composted at Residential Premises and Commercial Premises; and
- i. Materials generated by State facilities; and
- j. The incidental removal of Solid Waste when the primary service performed is either of the following:
  1. Landscaping, gardening, weed or refuse abatement, yard clean-up, or grading of a lot; or
  2. Construction, remodeling or demolition of a building or structure; and
- k. Unscheduled Service.

## **Section 2.4 Enforcement of Exclusivity.**

### **2.4.1 Enforcement by Contractor.**

Contractor shall be responsible for enforcing the exclusivity of this Agreement.

### **2.4.2 Enforcement by City.**

City shall reasonably assist Contractor in any efforts to enforce the exclusivity herein. City shall adopt such ordinances or other regulations as City 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 herein, 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 herein, or to assist Contractor in doing so.

**Section 2.5 Annexation.**

Territory that is annexed into City boundaries shall be added to the Service Area covered by this Agreement.

**ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR AND CITY**

**Section 3.1 Contractor Representations and Warranties.**

Contractor hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement, all of which shall be true as of the Effective Date of this Agreement:

**3.1.1 Corporate Status.**

Contractor is a corporation, duly organized, validly existing and in good standing under the laws of the State of California, and is qualified to do business in the State of California.

**3.1.2 Corporate Authorization.**

Contractor has the authority to enter into and perform its obligations under this Agreement. The directors of Contractor have taken all actions required by law, the articles of incorporation and bylaws or otherwise to authorize the execution of this Agreement.

**3.1.3 Agreement Duly Executed.**

The Persons signing this Agreement on behalf of Contractor have been authorized to do so and this Agreement constitutes a legal, valid and binding obligation of Contractor.

**3.1.4 No Conflict with Applicable Law or Other Documents.**

Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder:

- a. Conflicts with, violates or results in a breach of any existing Applicable Law;
- b. Conflicts with, violates or results in a breach or constitutes a default under any term or condition of any existing judgment, order or decree of any court, administrative agency or other governmental authority, or of any existing agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound; or
- c. Will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

**3.1.5 No Litigation.**

There is no action, suit or other proceeding as of the Effective Date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor, or otherwise affecting Contractor, which is likely to result in an unfavorable decision, ruling or finding, in



any single case or in the aggregate, which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor or the entity providing the guaranty of Contractor's performance.

### **3.1.6 Financial Condition.**

Contractor has made available to City information on its financial condition. Contractor recognizes that City has relied on this information in evaluating the sufficiency of Contractor's financial resources to perform this Agreement. To the best of Contractor's knowledge, this information is complete and accurate, does not contain any material misstatement of fact and does not omit any fact necessary to prevent the information provided from being materially misleading.

### **3.1.7 Insurance and Bonds.**

Contractor has the ability to procure all insurance policies and bonds or other security of performance required and as described in Article 17 and shall have procured all such insurance policies and bonds or other security of performance, which shall be in full force and effect on and as of the Services Initiation Date pursuant to Article 17.

### **3.1.8 Ability to Perform.**

Contractor has the expertise and professional and technical capability to perform all of its obligations under this Agreement.

### **3.1.9 Contractor's Investigation.**

Contractor has made an independent investigation and analysis, the results of which are satisfactory to Contractor, of the conditions and circumstances surrounding this Agreement, its content and preparation, and the work to be performed by Contractor under this Agreement. Contractor is satisfied that those conditions and circumstances will not impair Contractor's ability to perform the work and satisfy the obligations required by this Agreement. This Agreement accurately and fairly represents the intentions of Contractor and Contractor enters into this Agreement on the basis of that independent investigation and analysis.

### **3.1.10 Statements and Information Submitted by Contractor.**

The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and are complete in all material respects on and as of the Effective Date of this Agreement.

### **Section 3.2 City Representations and Warranties.**

City hereby covenants, represents, and warrants the following to Contractor for the purpose of inducing Contractor to enter into this Agreement, all of which shall be true as of the Effective Date of this Agreement:

#### **3.2.1 City Status.**

City is a municipal corporation, duly organized and validly existing under the Constitution and laws of the State.

#### **3.2.2 City Authorization.**

City has full legal right, power and authority to execute, deliver and perform its obligations under this Agreement.

#### **3.2.3 Agreement Duly Executed.**

The Persons signing this Agreement on behalf of City have been duly authorized to do so and this Agreement constitutes a legal, valid and binding obligation of City.

## **ARTICLE 4 EFFECTIVE DATE AND TERM**

### **Section 4.1 Effective Date.**

The Effective Date of this Agreement shall be April 5, 2011 subject to the conditions set forth in Section 4.2.

### **Section 4.2 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:

#### **4.2.1 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.

#### **4.2.2 Absence of Litigation.**

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

#### **4.2.3 Effectiveness of City Council Action.**

City Council's Resolution approving this Agreement shall have become effective pursuant to California law on or before the Effective Date.

**Section 4.3 Notice of Failure to Satisfy Condition.**

If either Party asserts that a condition precedent to the effectiveness of this Agreement set forth in Section 4.2 has not been satisfied and has not been waived, it must deliver written notice to that effect to the other Party on or before the Effective Date. If no such notice is received, the Agreement shall become effective on the Effective Date.

**Section 4.4 Term.**

The Term of this Agreement shall begin on the Services Initiation Date and shall end at midnight on June 30, 2019, unless this Agreement is terminated sooner pursuant to Article 19 or extended pursuant to Section 4.5.

**Section 4.5 Extension of Term.**

No later than eighteen (18) months prior to the expiration of the Term, Contractor may submit to City a written request for an extension of the Term of up to two (2) years, along with the information, data, records and reports documenting to satisfaction of City that Contractor has met each of the conditions set forth in this Section during the Term (or the portion thereof if less than the entire Term). Within one hundred twenty (120) Days of the date the request for an extension of the Term is received, City shall provide written notice to Contractor as to whether City accepts or rejects Contractor's request. If City determines that Contractor has satisfied the conditions set forth in this Section, City may accept Contractor's request and may extend the Term by a period of not to exceed two (2) years as requested by Contractor. If City fails to provide such notice within said time period, Contractor's request shall be deemed accepted and City shall extend the Term by a period not to exceed two (2) years as requested by Contractor. Pursuant to this Section, Contractor shall provide City information, data, records and reports documenting satisfaction of the following conditions:

**4.5.1 Satisfactory Performance.**

Contractor has performed the terms and obligations of this Agreement to the satisfaction of City.

**4.5.2 Diversion Compliance.**

Contractor has complied with the Diversion requirements set forth in Section 8.1 and was not subject to a penalty pursuant to Section 8.2 for failure to satisfy the Diversion requirements.

**4.5.3 Customer Satisfaction.**

Pursuant to Customer satisfaction surveys conducted according to Subsection 10.8.5, City has determined that Customers are satisfied with Collection services provided by Contractor under this Agreement.

**4.5.4 Timely Payment of Fees.**

Contractor has not been delinquent in the payment of any money due to City under this Agreement more than once each Fiscal Year or at any time longer than five (5) Days. City has not received written notice that Contractor has been delinquent in the payment of any sums or amounts due third parties with respect to Solid Waste Disposal and processing fees.

**4.5.5 No Transfer.**

This Agreement has not been transferred pursuant to Article 22.

**Section 4.6 Effect of Agreement.**

Upon the commencement of the Term as set forth in Section 4.4, the Prior City Franchise Agreement with Allied Waste and the Prior City Franchise Agreement with Marborg shall terminate and be superseded by this Agreement.

**Section 4.7 Contractor's Initiation Payment.**

Within thirty (30) Days of the Services Initiation Date, Contractor shall remit the balance remaining of a one-time, non-refundable payment of seventy-five thousand dollars (\$75,000.00) to City for the purpose of off-setting City's administrative costs for negotiating and preparing this Agreement.

**Section 4.8 Survival of Certain Provisions.**

The following provisions shall survive the Term of this Agreement: the Parties' representations and warranties set forth in Article 13; the Indemnification provisions set forth in Article 16; the outstanding payments that Contractor owes City as set forth in Article 12; the reporting requirements set forth in Article 14; and any other rights or obligations of the Parties expressly stated to survive the Term of this Agreement.

**ARTICLE 5 FRANCHISED SERVICES**

**Section 5.1 General.**

To protect the public health and safety, Contractor shall provide all labor, equipment, material, supplies, supervision and all other items necessary to perform the work and provide the services described at the times and in the manner required by this Agreement, including the Collection of all Solid Waste generated or accumulated within City from Residential Premises, Commercial Premises and City Facilities Premises covered by this Agreement not less often than once per week. The enumeration of, and specification of requirements for, particular items of labor, equipment, material, supplies or supervision shall not relieve Contractor of the duty to furnish all others, as may be required, whether enumerated elsewhere in this Agreement or not.

The work performed and the services provided by Contractor under this Agreement shall be in a thorough and professional manner so that all Customers are provided at all times with reliable, courteous and high-quality Solid Waste Handling Services.

## **Section 5.2 Transition to City-Wide Franchise Services.**

### **5.2.1 Good Faith Effort.**

Contractor shall make a good faith effort to ensure a smooth transition to the satisfaction of City from Solid Waste Handling Services provided by the Previous Contractor for a portion of the Service Area to Solid Waste Handling Services provided by Contractor for the entire Service Area.

### **5.2.2 Transition Plan.**

Within ten (10) Days of the Effective Date, Contractor shall submit to City a written Transition Plan acceptable to City. The Transition Plan shall provide the following:

- a. A Transition Period of no more than six (6) months commencing on the Services Initiation Date; and
- b. The addition of shifts and/or authorization of over-time at Contractor's expense if determined to be necessary to ensure implementation of the Transition Plan within and no longer than the Transition Period; and
- c. A schedule and scope of public outreach efforts to be pursued by Contractor to assist and inform Customers of the transition of Solid Waste Handling Services to Contractor for the entire Service Area pursuant to this Agreement; and
- d. A schedule for the transition of Solid Waste Handling Services to Customers within the entire Service Area to be completed during the Transition Period.

Beginning the week after submission of the Transition Plan to City, Contractor shall report to City each week until completion of the Transition Period regarding the status of implementation of the Transition Plan. Upon written request from City, Contractor shall meet with City at City Hall any time prior to the end of the Transition Period regarding the status of implementation of the Transition Plan.

## **Section 5.3 Residential Cart Collection Services – Single-Family Dwellings.**

### **5.3.1 SFD Solid Waste Cart Service.**

Upon request by any SFD Customer, Contractor shall Collect Solid Waste from SFD Customers according to the following:

- a. Contractor shall provide SFD Solid Waste Collection Service on the Customer's Collection Day not less than once per week; and
- b. Contractor shall provide each Customer with one (1) Solid Waste Cart. Contractor shall provide each Customer with the choice of the following Cart capacities: thirty-two (32), sixty-four (64) or ninety-six (96) gallons; and
- c. Upon request by a Customer, Contractor shall provide the Customer with additional Solid Waste Carts at capacities requested by the Customer; and
- d. Contractor shall Collect all Solid Waste placed for Collection at Curbside using automated Collection vehicles, unless Backyard Cart Service is provided pursuant to Subsection 5.3.4 or the Customer has a Permitted Set-Out Site. In the event that a Customer occasionally places Solid Waste adjacent to Carts, Contractor shall also Collect that Solid Waste. If a Customer routinely places for Collection Solid Waste

outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Solid Waste Carts; and

- e. Contractor shall provide SFD Solid Waste Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the capacity and number of Carts.

### **5.3.2 SFD Recyclables Cart Service.**

Upon request by any SFD Customer, Contractor shall Collect Source Separated Recyclables from SFD Customers according to the following:

- a. Contractor shall provide SFD Recyclables Collection Service on the Customer's Collection Day not less than once every other week; and
- b. Contractor shall provide each Customer with one (1) Recyclables Cart of a capacity of ninety-six (96) gallons; and
- c. Upon request by a Customer, Contractor shall provide the Customer with additional Recyclables Carts at the capacity of ninety-six (96) gallons, unless the Customer requests Carts at a capacity of thirty-two (32) or sixty-four (64) gallons; and
- d. Contractor shall Collect all Source Separated Recyclables placed for Collection at Curbside using automated Collection vehicles, unless Backyard Cart Service is provided pursuant to Subsection 5.3.4 or the Customer has a Permitted Set-Out Site. In the event that a Customer occasionally places Source Separated Recyclables adjacent to Carts, Contractor shall also Collect that Recyclables. If a Customer routinely places for Collection Source Separated Recyclables outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Recyclables Carts; and
- e. Contractor shall provide SFD Recyclables Collection Service to Customers at no additional charge to City or Customers according to Article 12.

### **5.3.3 SFD Green Waste Cart Service.**

Upon request by any SFD Customer, Contractor shall Collect Source Separated Green Waste from SFD Customers according to the following:

- a. Contractor shall provide SFD Green Waste Collection Service on the Customer's Collection Day not less than once per week; and
- b. Contractor shall provide each Customer with one (1) Green Waste Cart of a capacity of ninety-six (96) gallons; and
- c. Upon request by a Customer, Contractor shall provide the Customer with additional Green Waste Carts at the capacity of ninety-six (96) gallons, unless the Customer requests Carts at a capacity of thirty-two (32) or sixty-four (64) gallons; and
- d. Contractor shall Collect all Source Separated Green Waste placed for Collection at Curbside using automated Collection vehicles, unless Backyard Cart Service is provided pursuant to Subsection 5.3.4 or the Customer has a Permitted Set-Out Site. In the event that a Customer occasionally places Source Separated Green Waste adjacent to Carts, Contractor shall also Collect that Green Waste. If a Customer routinely places for Collection Source Separated Green Waste outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Green Waste Carts; and
- e. Contractor shall provide SFD Green Waste Collection Service to Customers at no additional charge to City or Customers according to Article 12.

#### **5.3.4 SFD Backyard Cart Service.**

Upon request by any eligible SFD Customer, Contractor shall provide Backyard Cart Service at no additional charge to City or Customers according to Article 12. SFD Customers eligible for Backyard Cart Service at no additional charge include only those SFD Customers that are receiving Cart services under this Section and that:

- a. Submit documentation (e.g., a form signed by a doctor or documentation of qualification for or issuance of a Disabled Person (DP) or Disabled Veteran (DV) parking placard or license plate by the California Department of Motor Vehicles) of their inability to perform the generally applicable Curbside set-out requirements for Collection; and/or
- b. Are eighty (80) years of age or older.

Upon request by any other (ineligible) SFD Customer, Contractor shall provide Backyard Cart Service for compensation paid by the Customer up to the Maximum Rates according to Article 12 based on the Cart capacity and number of Carts.

### **Section 5.4 Residential Cart Collection Services – Multi-Family Dwellings.**

#### **5.4.1 MFD Solid Waste Cart Service.**

For MFD Customers that do not have space for or do not generate enough Solid Waste to require the use of Bins for Collection, upon request by any MFD Customer, Contractor shall Collect Solid Waste from MFD Customers according to the following:

- a. Contractor shall provide MFD Solid Waste Collection Service on the Customer's Collection Day not less than once per week; and
- b. Contractor shall provide each Customer with one (1) Solid Waste Cart. Contractor shall provide each Customer with the choice of the following Cart capacities: thirty-two (32), sixty-four (64) or ninety-six (96) gallons; and
- c. Upon request by a Customer, Contractor shall provide the Customer with additional Solid Waste Carts at capacities requested by the Customer; and
- d. Contractor shall Collect all Solid Waste placed for Collection at Curbside using automated Collection vehicles, unless the Customer has a Permitted Set-Out Site. In the event that a Customer occasionally places Solid Waste adjacent to Carts, Contractor shall also Collect that Solid Waste. If a Customer routinely places for Collection Solid Waste outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Solid Waste Carts; and
- e. Contractor shall provide MFD Solid Waste Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Cart capacity and number of Carts.

#### **5.4.2 MFD Recyclables Cart Service.**

For MFD Customers that do not have space for or do not generate enough Recyclables to require the use of Bins for Collection, upon request by any MFD Customer, Contractor shall Collect Source Separated Recyclables from MFD Customers according to the following:

- a. Contractor shall provide MFD Recyclables Collection Service on the Customer's Collection Day not less than once every other week; and
- b. Contractor shall provide each Customer with one (1) Recyclables Cart of a capacity of ninety-six (96) gallons; and

- c. Upon request by a Customer, Contractor shall provide the Customer with additional Recyclables Carts at the capacity of ninety-six (96) gallons, unless the Customer requests Carts at a capacity of thirty-two (32) or sixty-four (64) gallons; and
- d. Contractor shall Collect all Source Separated Recyclables placed for Collection at Curbside using automated Collection vehicles, unless the Customer has a Permitted Set-Out Site. In the event that a Customer occasionally places Source Separated Recyclables adjacent to Carts, Contractor shall also Collect that Recyclables. If a Customer routinely places for Collection Source Separated Recyclables outside the Cart, Contractor shall work with the Customer to determine if the Customer is in need of additional Recyclables Carts; and
- e. Contractor shall provide MFD Recyclables Collection Service to Customers at no additional charge to City or Customers according to Article 12.

## **Section 5.5. Additional Residential Cart Services.**

### **5.5.1 Go-Back Service.**

In the event that a Residential Customer has forgotten or otherwise missed the designated time on Customer's Collection Day to place a Cart at Curbside or a Permitted Set-Out Site for Collection, Contractor shall provide a Go-Back Service to return to the Residential Premises the same Day, if the Customer contacts Contractor pursuant to Section 10.7 before noon on the Customer's Collection Day, or the following Business Day, if the Customer contacts Contractor pursuant to Section 10.7 after noon on the Customer's Collection Day, to provide Collection services. Contractor shall provide the Go-Back Service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each occurrence.

## **Section 5.6 Residential Bin Collection Services – Single-Family Dwellings.**

### **5.6.1 SFD Solid Waste, Recyclables and Green Waste Bin Service.**

Upon request by any SFD Customer, Contractor shall Collect Solid Waste, Source Separated Recyclables and Source Separated Green Waste from SFD Customers according to the following:

- a. Contractor shall provide SFD Solid Waste Collection Service on the Customer's Collection Day not less than once and up to six (6) times per week, except that the Customer may schedule additional Bin Collections; and
- b. An additional Bin Collection may be requested by the Customer for any Business Day; and
- c. Contractor shall provide each Customer with one (1) Solid Waste Bin. Contractor shall provide each Customer with the choice of the following Bin capacities: 1.5, 2, 3 and 4 cubic yards; and
- d. Upon request by a Customer, Contractor shall provide the Customer with additional Bins at capacities requested by the Customer; and
- e. Customers shall have adequate space for a Bin on the Customer's premises and not within the public right-of-way; and
- f. Contractor shall Collect all Solid Waste placed for Collection at a Permitted Set-Out Site; and



- g. Contractor shall provide SFD Solid Waste Collection Service and any additional Bin Collections to Customers for compensation paid by Customers up to the Maximum Rates according to Article 12 based on the Bin capacity and number of Collections per week; and
- h. In addition to the provision of Bins for Solid Waste Collection, Contractor shall provide Carts for Source Separated Recyclables and Source Separated Green Waste and shall Collect Source Separated Recyclables and Source Separated Green Waste as provided under SFD Cart services pursuant to Subsections 5.3.2 and 5.3.3, respectively.

## **Section 5.7 Residential Bin Collection Services – Multi-Family Dwellings.**

### **5.7.1 MFD Solid Waste Bin Service.**

Upon request by any MFD Customer, Contractor shall Collect Solid Waste from MFD Customers according to the following:

- a. Contractor shall provide MFD Solid Waste Collection Service on the Customer's Collection Day not less than once and up to six (6) times per week, except that the Customer may schedule additional Bin Collections; and
- b. An additional Bin Collection may be requested by the Customer for any Business Day; and
- c. Contractor shall provide each Customer with one (1) Solid Waste Bin. Contractor shall provide each Customer with the choice of the following Bin capacities: 1.5, 2, 3 and 4 cubic yards; and
- d. Upon request by a Customer, Contractor shall provide the Customer with additional Bins at capacities requested by the Customer; and
- e. Customers shall have adequate space for a Bin on the Customer's premises and not within the public right-of-way; and
- f. Contractor shall Collect all Solid Waste placed for Collection at a Permitted Set-Out Site; and
- g. Contractor shall provide MFD Solid Waste Collection Service and any additional Bin Collections to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Bin capacity and number of Collections per week.

### **5.7.2 MFD Recyclables Bin Service.**

Upon request by any MFD Customer, Contractor shall Collect Source Separated Recyclables from MFD Customers according to the following:

- a. Contractor shall provide each Customer thirty percent (30%) of the Customer's Solid Waste Bin capacity for Source Separated Recyclables at no additional charge to City or Customers according to Article 12; and
- b. Contractor shall determine and provide the equivalent Recyclables Cart or Bin with a capacity of no less than the thirty percent (30%) capacity of the Solid Waste Bin; and
- c. In addition to the above, upon request by a Customer, Contractor shall provide the Customer with one (1) Recyclables Bin. Contractor shall provide the Customer with the choice of the following Bin capacities: 1.5, 2, 3 and 4 cubic yards; and
- d. Upon request by a Customer, Contractor shall provide the Customer with additional Bins at capacities requested by the Customer; and

- e. Contractor shall provide MFD Recyclables Collection Service on the Customer's Collection Day not less than once up to (six) times per week, except that the Customer may schedule additional Bin Collections; and
- f. An additional Bin Collection may be requested by the Customer for any Business Day; and
- g. Customers shall have adequate space for a Bin on the Customer's premises and not within the public right-of-way; and
- h. Contractor shall Collect all Source Separated Recyclables placed for Collection at a Permitted Set-Out Site; and
- i. Contractor shall provide MFD Recyclables Collection Service and any additional Bin Collections to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Bin capacity and number of Collections per week.

## **Section 5.8 Additional Residential Bin Services.**

### **5.8.1 Padlock Rental and Padlock or Bar Lock Installation Service.**

Upon request by a Residential Customer, Contractor shall provide a padlock or bar lock installation service, which includes providing a Bin with lockable lids and a padlock or bar lock, and unlocking and re-locking the Bin each time it is serviced. Contractor shall provide the padlock or bar lock installation service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin. Contractor shall provide padlocks for rental on a monthly basis for compensation up to the Maximum Rates according to Article 12.

### **5.8.2 Overloaded Bin Collection Service.**

Contractor shall provide Collection services of Overloaded Bins for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin.

### **5.8.3 Bin Steam Cleaning Services.**

Upon request by a Residential Customer, Contractor shall provide steam cleaning services of Bins. All Bin steam cleaning services shall be provided on Contractor-owned or -leased premises. Contractor shall provide Bin steam cleaning services once per Fiscal Year at no additional charge to City or Customers and for two more times per Fiscal Year for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin.

## **Section 5.9 Additional Residential Collection Services.**

### **5.9.1 Bulky Items Collection.**

Contractor shall provide up to two (2) On-Call Services per Fiscal Year for the Collection of Bulky Items from Residential Premises. Upon receiving a request from a Customer, Contractor shall Collect Bulky Items within seven (7) Days on a Day and at a time designated by Contractor. Contractor shall provide Bulky Items Collection to Residential Customers at no additional charge to City or Customers according to Article 12.

### **5.9.2 E-Waste and White Goods Collection.**

Contractor shall provide unlimited E-Waste and White Goods Collection from Residential Premises. Upon receiving a request from a Customer, Contractor shall Collect E-Waste and White Goods within seven (7) Days on a Day and at a time designated by Contractor. Contractor shall provide E-Waste and White Goods Collection to Residential Customers at no additional charge to City or Customers according to Article 12.

### **5.9.3 Holiday (Christmas) Trees Collection.**

Contractor shall Collect Holiday (Christmas) Trees from Residential Premises placed Curbside or at a Permitted Set-Out Site for Collection on the Customer's Collection Day at any time during the Fiscal Year. Holiday (Christmas) Trees shall be free of all ornamentation and the stands shall be removed. Contractor shall provide Holiday (Christmas) Trees Collection to Residential Customers at no additional charge to City or Customers according to Article 12.

### **5.9.4 Household Battery Collection.**

Contractor shall Collect Household Batteries from Residential Premises placed in a clear plastic bag on top of the Recyclables Cart or next to the Recyclables Bin for Collection on the Customer's Collection Day on which Recyclables are Collected. Contractor shall provide Residential Customers five (5) clear plastic bags per Fiscal Year. Household Batteries shall have tape placed over the poles to prevent contact between the Household Batteries in the bag. Contractor shall Recycle all Household Batteries Collected. Contractor shall provide Household Battery Collection to Residential Customers at no additional charge to City or Customers according to Article 12.

### **5.9.5 Sharps Waste Collection.**

Contractor shall provide for Collection of Sharps Waste from Residential Premises by mail. Upon a Residential Customer request, Contractor shall deliver to the Customer mail-in Sharps Waste containers on the next Business Day. The mail-in Sharps Waste containers shall be one-gallon containers with postage-paid return packaging. Contractor shall provide Sharps Waste Collection to Residential Customers at no additional charge to City or Customers according to Article 12.

### **5.9.6 Access to the Marborg Goleta Buyback Center.**

Contractor shall provide access to the Marborg Goleta Buyback Center to all Residential Customers. The Marborg Goleta Buyback Center accepts antifreeze, batteries, oil, paint, fluorescent lights, compact disks, cell phones, computers, televisions, DVD players and other E-Waste. Contractor shall provide access to and drop-off of any accepted items at the Marborg Goleta Buyback Center to Residential Customers at no additional charge to City or Customers according to Article 12.

## **Section 5.10 Commercial Cart Collection Services.**

### **5.10.1 Commercial Solid Waste Cart Service.**

For Commercial Customers that do not have space for or do not generate enough Solid Waste to require the use of Bins for Collection, upon request from any Commercial Customer, Contractor shall provide Commercial Solid Waste Collection Service according to the same Solid Waste Cart Collection services provided for MFD Customers in Subsection 5.4.1. Contractor shall provide Commercial Solid Waste Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Cart capacity and number of Carts.

### **5.10.2 Commercial Recyclables Cart Service.**

For Commercial Customers that do not have space for or do not generate enough Recyclables to require the use of Bins for Collection, upon request from any Commercial Customer, Contractor shall provide Commercial Recyclables Collection Service according to the same Recyclables Cart Collection services provided for MFD Customers in Subsection 5.4.2, except that Contractor shall provide Commercial Recyclables Collection Service on the Customer's Collection Day not less than once per week. Contractor shall provide Commercial Recyclables Collection Service to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12, except that Contractor shall provide additional Recyclables Carts at no additional charge to City or Customers according to Article 12.

## **Section 5.11 Additional Commercial Cart Services.**

### **5.11.1 Padlock Rental and Installation Service.**

Upon request by a Commercial Customer, Contractor shall provide a padlock installation service, which includes providing a Cart with lockable lids and a lock, and unlocking and re-locking the Cart each time it is serviced. Contractor shall provide the padlock installation service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Cart. Contractor shall also rent padlocks on a monthly basis for compensation up to the Maximum Rates according to Article 12.

### **5.11.2 Go-Back Service.**

In the event that a Commercial Customer has forgotten or otherwise missed the designated time on Customer's Collection Day to place a Cart at Curbside or a Permitted Set-Out Site for Collection, Contractor shall provide a Go-Back Service to return to the Commercial Premises the same Day, if the Customer contacts Contractor pursuant to Section 10.7 before noon on the Customer's Collection Day, or the following Business Day, if the Customer contacts Contractor pursuant to Section 10.7 after noon on the Customer's Collection Day, to provide Collection services. Contractor shall provide the Go-Back Service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each occurrence.

## **Section 5.12 Commercial Bin Collection Services.**

### **5.12.1 Commercial Solid Waste Bin Service.**

Upon request by any Commercial Customer, Contractor shall provide Commercial Solid Waste Collection Service to Commercial Customers according to the same Solid Waste Bin Collection services provided for MFD Customers in Subsection 5.7.1.

### **5.12.2 Commercial Recyclables Bin Service.**

Upon request by any Commercial Customer, Contractor shall Collect Source Separated Recyclables from Commercial Customers according to the following:

- a. Contractor shall provide Commercial Recyclables Collection Service on the Customer's Collection Day not less than once up to (six) times per week, except that the Customer may schedule additional Bin Collections; and
- b. An additional Bin Collection may be requested by the Customer for any Business Day; and
- c. Contractor shall provide the Customer with one (1) Recyclables Bin. Contractor shall provide the Customer with the choice of the following Bin capacities: 1.5, 2, 3 and 4 cubic yards; and
- d. Customers shall have adequate space for a Bin on the Customer's premises and not within the public right-of-way; and
- e. Contractor shall Collect all Source Separated Recyclables placed for Collection at a Permitted Set-Out Site; and
- f. Contractor shall provide Commercial Recyclables Collection Service and any additional Bin Collections to Customers for compensation paid by the Customers up to the Maximum Rates according to Article 12 based on the Bin capacity and number of Collections per week.

## **Section 5.13 Additional Commercial Bin Services.**

### **5.13.1 Padlock Rental and Padlock or Bar Lock Installation Service.**

Upon request by a Commercial Customer, Contractor shall provide a padlock or bar lock installation service, which includes providing a Bin with lockable lids and a padlock or bar lock, and unlocking and re-locking the Bin each time it is serviced. Contractor shall provide the padlock or bar lock installation service for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin. Contractor shall provide padlocks for rental on a monthly basis for compensation up to the Maximum Rates according to Article 12.

### **5.13.2 Overloaded Bin Collection Service.**

Contractor shall provide Collection services of Overloaded Bins for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin.

### **5.13.3 On-Call Bin Collection Service.**

Contractor shall provide On-Call Services for the Collection of Source Separated Recyclables Bins from Commercial Premises. On-Call Services for Bin Collection may be requested by the Customer for any Business Day. Contractor shall provide On-Call Services for Bin Collection for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Collection.

### **5.13.4 Bin Steam Cleaning Services.**

Upon request by a Commercial Customer, Contractor shall provide steam cleaning services of Bins. All Bin steam cleaning services shall be provided on Contractor-owned or -leased premises. Contractor shall provide Bin steam cleaning services once per Fiscal Year at no additional charge to City or Customers and for two more times per Fiscal Year for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each Bin.

## **Section 5.14 Commercial Roll-Off Collection Services.**

Upon request by a Commercial Customer, Contractor shall provide Roll-Off Collection services according to this Section. Contractor shall provide Roll-Off Boxes at capacities of 11, 18, 25 or 40 cubic yards for rental on a monthly basis for compensation up to the Maximum Rates according to Article 12. Contractor shall provide Collection services to the Designated Transfer and Processing Facility, Contractor's Facilities and the Designated Disposal Site for compensation up to the Maximum Rates according to Article 12 on the basis of the capacity of the Roll-Off Box, the destination of the Collected load and whether the load is compacted or non-compacted. Roll-Off Collection services include Disposal services for compensation up to the Maximum Rates according to Article 12, which such compensation shall be the same regardless of whether the load is compacted or non-compacted. Contractor shall not be required to furnish compactors to Customers.

## **Section 5.15 Additional Commercial Roll-Off Services.**

### **5.15.1 Compactor Steam Cleaning Services.**

Upon request by a Commercial Customer, Contractor shall provide steam cleaning services of Customer-owned compactors. All compactor steam cleaning services shall be provided on Contractor-owned or -leased premises. Contractor shall provide compactor steam cleaning services once per Fiscal Year at no additional charge to City or Customers and for two or more times per Fiscal Year for compensation up to the Maximum Rates according to Article 12 paid by the Customer for each compactor.

## **Section 5.16 City Facilities Services.**

Contractor shall Collect all Solid Waste, Source Separated Recyclables and Source Separated Green Waste put in Containers for Collection at City Facilities Premises. Contractor shall provide Collection services at City Facilities Premises at no charge to City. Contractor shall provide Collection services at least at the service levels, based on quantity and capacity of Containers and number of Collections as provided in Exhibit D. If service levels are not

sufficient to ensure Containers do not become full, service levels shall be increased at no charge to City. The Director may change the service levels and may add or change the location of City Facilities Premises serviced during the Term at no charge to City. The Director shall provide any such changes to Contractor in writing. Collections shall be scheduled on Days and at times mutually agreed upon by Contractor and the Director.

**Section 5.17 Portable Toilets.**

Contractor shall provide portable toilets at those locations identified in Exhibit F at no charge to City. Contractor shall provide Collection of any liquid waste and Solid Waste at the portable toilets no less than once per week. All portable toilets shall be wheelchair accessible and shall be maintained to the satisfaction of City. The Director may change the service levels and may add or change the location of portable toilets serviced during the Term at no charge to City. The Director shall provide any such changes to Contractor in writing. Collections shall be scheduled on Days and at times mutually agreed upon by Contractor and the Director.

**Section 5.18 City-Sponsored Events.**

Contractor shall provide Solid Waste, Source Separated Recyclables and liquid waste Collection for those City-sponsored events set forth in Exhibit E. Contractor shall provide Containers (Bins, Roll-off Boxes, clearly labeled Recyclables Containers and cardboard waste boxes with liners) to Collect all Solid Waste and Source Separated Recyclables. Contractor shall provide wheelchair accessible portable toilets for those City-sponsored events set forth in Exhibit E. Contractor and the Director shall mutually agree upon the number and location of Containers and portable toilets necessary for each City-sponsored event prior to the event. Contractor shall provide these services at City-sponsored events at no charge to City. The Director may replace any City-sponsored events set forth in Exhibit E that are discontinued with events requiring comparable levels of service.

**Section 5.19 Community Cleanup Projects.**

Contractor shall provide Solid Waste Collection service for up to six (6) community cleanup projects per Fiscal Year. A community cleanup project shall consist of City employees and/or volunteers working to pickup Solid Waste from public places over a one- or two-Day period. Community cleanup projects shall be determined by the Director. Contractor shall deliver Roll-Off Boxes and/or Bins to locations determined by the Director for the community cleanup projects upon two (2) Business Days notice from the Director. Contractor shall Collect all Roll-Off Boxes and Bins within one (1) Business Day of completion of the community cleanup project.

**Section 5.20 Abandoned Items.**

Upon request by the Director, Contractor shall Collect no more than forty-five (45) times per Fiscal Year up to a Fiscal Year total of fifteen (15) tons of all Bulky Items and/or other Solid Waste discarded legally or illegally in the public right-of-way or on other City-owned property. The public right-of-way shall include highways, streets, alleys, sidewalks or any other public right-of-way owned, operated or maintained by City, the County, or the State of California. If the Director contacts Contractor before noon on a Business Day, Contractor shall Collect the abandoned item(s) that same Business Day. If the Director contacts Contractor after noon on a

Business Day or on a Day that is not a Business Day, Contractor shall Collect the abandoned item(s) by the end of the following Business Day. Contractor shall provide this service at no charge to City.

**Section 5.21 Mulch Give-Away.**

Upon request from the Director, Contractor shall provide mulch in a volume of up to two (2) Roll-Off Boxes of a capacity of forty (40) cubic yards each up two (2) times per Fiscal Year for a total maximum capacity of one hundred sixty (160) cubic yards per Fiscal Year for the use and benefit of City and/or its residents. The Director shall provide the location for the placement of the Roll-Off Boxes. Contractor shall provide this service at no charge to City.

**Section 5.22 Community Development Review Services.**

Upon request from the Director, Contractor shall review building permit applicants' plans and advise applicants regarding adequacy of Container storage space and access, particularly to accommodate the Collection of Source Separated Recyclables. Contractor shall provide this service at no charge to City.

**Section 5.23 Street Sweeping Debris.**

Upon request from the Director, Contractor shall continually provide a Roll-Off Box at a location designated by the Director for the Collection of street sweeping debris at no charge to City. Contractor shall Collect all street sweeping debris from the Roll-Off Box no less than once every other week. Collections shall be scheduled on Days and at times mutually agreed upon by Contractor and the Director. Contractor shall provide this service at no charge to City.

**Section 5.24 Public School Sites.**

Contractor shall offer Solid Waste, Source Separated Recyclables and Source Separated Green Waste Collection services to all public school sites within the Service Area. If such Collection services are provided, such services shall be provided at no charge to City or the school district in which the public school site is located.

**Section 5.25 Meet and Confer Regarding Additional Recycling Programs.**

Upon City request, Contractor shall meet and confer with City regarding additional Recycling service programs, including, but not limited to, a mandatory commercial Recycling program and a food scrap Recycling program. Contractor shall meet and confer with City at any time and as often as City requests during the Term of this Agreement. Contractor and City shall consider the following: the design and implementation of an outreach and education program to communicate with businesses, restaurant establishments and other Customers and the potential Recycled uses of the materials Collected as part of these programs, including composting, biomass, for use as animal feed, or some other beneficial use.



## **ARTICLE 6 OPERATIONS**

### **Section 6.1 Collection Hours and Collection Schedule.**

#### **6.1.1 Residential Collection Regular Hours of Collection.**

Solid Waste, Source Separated Recyclables and Source Separated Green Waste, including all additional services provided to Residential Premises, shall be Collected from Residential Premises on Business Days between 6:00 a.m. and 6:00 p.m. on Monday through Friday and between 7:00 a.m. and 6:00 p.m. on Saturday.

#### **6.1.2 Commercial and City Facilities Collection Regular Hours of Collection.**

Solid Waste, Source Separated Recyclables and Source Separated Green Waste, including all additional services provided to Commercial Premises, shall be Collected from Commercial Premises and City Facilities Premises on Business Days between 6:00 a.m. and 6:00 p.m.

#### **6.1.3 Holiday Schedule.**

Contractor shall provide Collection services scheduled for a Holiday on the Business Day immediately following the Holiday. Contractor shall provide affected Customers advance written notice of that change in the following manners:

- a. An insert in the Bill immediately preceding the Holiday; and
- b. By email to Customers that have provided an email address; and
- c. In a newsletter sent to Customers before the Holiday.

#### **6.1.4 Noise Exceptions to Regular Hours of Collection.**

City may restrict or require modifications to hours for Collection from Commercial Premises and City Facilities Premises to resolve noise Complaints. Any City ordinances, resolutions or other regulations that regulate noise limits and limits the hours of Collection more restrictively than the preceding Subsections, the terms of the City ordinance, resolution or other regulation shall govern.

#### **6.1.5 Emergency Exception to Regular Hours of Collection.**

In the event of an emergency in which City may request the assistance of Contractor pursuant to Article 18, Contractor shall provide Collection service that may or may not be within the regular hours of Collection.

#### **6.1.6 Collection Schedule Changes.**

Contractor shall notify each Customer of any change in that Customer's Collection Day in each of the following manners:

- a. On a tag attached to each Residential Customer's Container on that Customer's Collection Day immediately preceding the change; and
- b. By phone or in person to each Commercial Customer the week preceding the change; and

- c. By email to Customers who have provided an email address; and
- d. By any other manner and time requested by City.

## **Section 6.2 Service Exceptions and Non-Collection Notices.**

Contractor shall not be required to provide Collection services in the following events when Contractor shall take the following action:

### **6.2.1 Contaminated Materials.**

Customer has discarded other than Recyclables in the Recyclables Container and other than Green Waste in the Green Waste Container. Contractor shall attach a non-Collection notice to the Container. The notice shall explain the reason for the non-Collection and provide information listing examples of Recyclables and Green Waste and how to discard these materials.

### **6.2.2 Setting Container Out on a Day Other Than Customer's Collection Day.**

Customer has set a Container out on a Day that is not the Customer's Collection Day, such as setting out a Recyclables Container on the week when Recyclables are not Collected, but Green Waste is Collected. Contractor shall attach a non-Collection notice to the Container. The notice shall explain the reason for the non-Collection.

### **6.2.3 Uncontainerized Solid Waste.**

Customer discards Solid Waste outside a Container, unless otherwise allowed under this Agreement, such as Bulky Items and Holiday (Christmas) Trees. Contractor shall attach a non-Collection notice to the uncontainerized Solid Waste or Customer's adjacent Container. The notice shall explain the reason for the non-Collection and explain when, where and what uncontainerized Solid Waste the Customer may discard for Collection.

### **6.2.4 Excess Weight.**

Customer's Container is in excess of weight limits posted on the Container. Contractor shall attach a non-Collection notice to the Container. The notice shall explain the reason for the non-Collection.

### **6.2.5 Hazardous Waste.**

In the event Contractor determines that Containers contain Hazardous Waste, other than Household Hazardous Waste not discovered and identified by Contractor acting under its Hazardous Waste Handling Protocol submitted to City pursuant to Section 6.7. Contractor shall implement its Hazardous Waste Handling Protocol. Contractor shall attach a non-Collection notice to the Container if Contractor determines that it is safe to not Collect the Hazardous Waste. The notice shall explain the reason for non-Collection and shall provide the Customer with written information about the proper Disposal of Hazardous Waste. Contractor shall report such non-Collection to City in the Monthly Report provided to City pursuant to Section 13.4.

### **6.2.6 Improper Set-Out Site.**

Customer has not set out the Container Curbside or at a Permitted Set-Out Site, excluding Customers provided Backyard Cart Service. Contractor shall attach a non-Collection notice to the Container. The notice shall explain the reason for non-Collection.

### **6.2.7 Health or Safety Threat.**

Contractor determines that any condition at or near any Set-Out Site presents a health or safety threat to Contractor's employees. Contractor shall immediately notify the Customer in person, by phone, email or other means available to Contractor. Upon authorization by the Director, Contractor shall discontinue Collection until the threat is eliminated.

## **Section 6.3 Route Maps, Schedules and Audits.**

### **6.3.1 Route Maps and Schedules.**

Within seven (7) Days of City request, Contractor shall provide City any or all of the following:

- a. Maps showing Contractor's Solid Waste, Recyclables and Green Waste Collection routes; and
- b. Route sheets listing the Customers' names, addresses, levels of service, day and approximate time of Collection.

At least thirty (30) Days prior to any route changes, Contractor shall give City revised maps and route sheets.

### **6.3.2 Route Audits.**

Contractor shall cooperate with City route audits of vehicles that Collect Solid Waste, Source Separated Recyclables and Source Separated Green Waste in City, including allowing City to follow the vehicles and, with Contractor's consent, ride in the vehicles.

## **Section 6.4 Vehicles.**

### **6.4.1 Air Emissions.**

Contractor warrants that it shall provide an adequate number of vehicles and equipment for the Collection, Disposal and transportation services for which it is responsible under this Agreement. Contractor shall, by December 31, 2013, use only vehicles that meet the California Air Resources Board's emission standards.

### **6.4.2 Noise.**

Contractor shall submit to City, upon City's request, a certificate of vehicle noise level testing, by an independent testing entity, upon execution of this Agreement and for any Collection vehicle as to which City or Contractor has received more than one Complaint regarding excessive noise in any twelve (12) month period.

#### **6.4.3 Vehicle Identification.**

Contractor shall place the following information on every Collection vehicle in letters and figures at least three inches (3") high in colors that contrast with the background:

- a. Contractor's name, unless Contractor immediately notifies the Director that Contractor has substituted another vehicle without Contractor's name to temporarily provide Collection services when the vehicle that Contractor usually uses for Collection is undergoing service and/or repair; and
- b. Contractor's toll-free telephone number; and
- c. A unique vehicle number.

Contractor shall clearly display its City business license and any other City permits issued in the front window of every Collection vehicle. Contractor may place safety instructions on Collection vehicles. Contractor shall not place any other words or pictures, except as provided herein, on Collection vehicles without City consent.

#### **6.4.4 Maintenance and Safety.**

Contractor shall maintain Collection vehicles in clean condition and good repair to ensure that Collection vehicles operate properly and safely according to the following:

- a. **Leaks.** Contractor shall not allow hydraulic fluid or other liquid to leak from any vehicle and shall immediately clean up any leaks. Contractor shall keep a record of leaks including type, amount and action taken to clean it up. Contractor shall report such leaks to City in the Monthly Report provided to City pursuant to Section 13.4.
- b. **Inspections.** Contractor shall have the California Highway Patrol inspect each vehicle under law. Contractor shall conduct additional inspections, such as brake testing, within seven (7) Days of a request from the Director. Contractor acknowledges that City may inspect any vehicle.
- c. **Maintenance Log and Safety Compliance Report.** Within two (2) Business Days of a request from the Director, Contractor shall provide City a copy of its vehicle maintenance log and any safety compliance report, including, but not limited to, any report issued under California Vehicle Code Sections 34500, *et seq.* and the biennial "BIT" inspections conducted by the California Highway Patrol.
- d. **Oil Recycling, Re-refined Oil.** Contractor shall Recycle all used oil from its vehicle maintenance operations and make reasonable business efforts to use re-refined oil.

#### **6.4.5 Appearance.**

Contractor acknowledges that it is important to City that Contractor present a professional and well-maintained image. Contractor shall wash and scrub bonnets of front-end loading vehicles each Business Day and the entire vehicle as often as necessary to preserve and maintain a professional and pleasing image, and within two (2) Days of a request from the Director. Contractor shall paint vehicles within thirty (30) Days of a request from the Director.

#### **6.4.6 Spare Vehicles.**

Contractor shall maintain a sufficient number of vehicles, fully fueled and ready to dispatch, to replace any vehicle that breaks down on route so that Customer service is minimally delayed.

#### **6.4.7 Sanitary Operation.**

Contractor shall comply with all measures and procedures promulgated by all agencies having jurisdiction over the safe and sanitary operation of Contractor's equipment.

### **Section 6.5 Personnel.**

#### **6.5.1 Key Personnel.**

Contractor acknowledges that providing services under this Agreement is personal in nature because it requires continuous and extensive communication between Contractor's personnel and City staff, and knowledge of City streets, terrain and requirements under this Agreement. Contractor shall use reasonable business efforts to provide City with thirty (30) Days notice of a change in the following personnel:

- a. Route supervisor, and
- b. City liaison in Contractor's financial accounting department responsible for submitting reports with respect to Franchisee Monthly Fees; and
- c. City liaison in any Contractor department responsible for submitting reports with respect to Contractor's Diversion of Solid Waste in City.

In its notice to City, Contractor shall include the name and professional qualifications of the replacement personnel. The Director may request, upon thirty (30) Days prior notice, that Contractor use reasonable business efforts to appoint an alternative individual as the City liaison in any Contractor department responsible for submitting reports with respect to Contractor's Diversion of Solid Waste in City

#### **6.5.2 Employment Opportunities.**

As positions arise, Contractor may promote current Contractor employees and thereafter Contractor shall make a good faith effort to hire employees of the Previous Contractor for available employment positions as they arise before advertising and offering the position to other Persons. Contractor shall make a good faith effort to provide such employees with equivalent benefits and seniority as compared to the benefits and seniority such employees had as an employee of the Previous Contractor.

#### **6.5.3 Workers' Compensation Modification Factor Documentation.**

Within two (2) Business Days of a request from the Director, Contractor shall provide City with Contractor's Workers' Compensation Experience Modification Factor documentation.

#### **6.5.4 Drivers.**

Contractor shall provide appropriate and applicable operational and safety training, including on-job-training by supervisors, to all employees that drive Collection vehicles and/or operate equipment for Collection. Contractor shall train a sufficient number of employees to drive all Collection routes to ensure there is no lapse of Solid Waste Handling Services under this Agreement. Contractor shall keep complete training records. Contractor shall use reasonable business efforts to assign the same employees to drive identified routes in order to encourage accountability and enhance Customer relations. Contractor shall provide a cell phone or an equivalent communication device to each employee that drives a Collection

vehicle to keep in contact with Contractor's Customer service representatives, operation and maintenance personnel and the route supervisor. Contractor shall carry out drug and alcohol testing of employees that drive Collection vehicles and shall keep complete testing records. Contractor shall make certain that all employees that drive Collection vehicles have in full force and effect a valid driver's license of the appropriate class issued by the California Department of Motor Vehicles and keep copies of such licenses.

#### **6.5.5 Route Supervisor.**

Contractor shall assign qualified personnel to supervise field operations in the Service Area, including:

- a. Checking that Collection meets specifications under this Agreement; and
- b. Making Collection improvements; and
- c. Resolving field problems, such as reports of commingling Green Waste or Recyclables with Solid Waste; and
- d. Responding to Complaints of Customers in person or by telephone, such as missed pickups, noise, litter, etc.

Contractor shall provide the route supervisor a cell phone or an equivalent communication device to keep in contact with Contractor's Customer service representatives, operation and maintenance personnel, City and drivers.

#### **6.5.6 Identification, Appearance and Conduct.**

Contractor shall ensure that all of its employees who come into contact with the public present a neat, tidy and orderly appearance and that clear identification as an employee of Contractor.

#### **6.5.7 Gratuities.**

Contractor shall not, nor shall it permit any officer, agent or employee to, request, solicit, or demand, either directly or indirectly, any gratuity from Customers for the Collection of Solid Waste required to be Collected under this Agreement.

#### **6.5.8 Nondiscrimination and Compliance with Law.**

Contractor shall comply with all applicable nondiscrimination laws and shall not discriminate against any Person as an employee or potential employee on the basis of his or her race, color, national origin, ancestry, religion, creed, physical handicap, medical condition, marital status or sexual orientation. Contractor shall comply with all applicable labor laws and other applicable laws relating to Contractor as an employer.

### **Section 6.6 Interruption of Service.**

Within thirty (30) Days of the Effective Date, Contractor shall submit a Back-Up Plan to City. The Back-Up Plan shall set forth the procedures that Contractor shall follow in the event of an interruption of services provided under this Agreement. In the event that an interruption of services provided under this Agreement occurs, within twenty-four (24) hours of a request from the Director, Contractor shall implement the Back-Up Plan.

## **Section 6.7 Hazardous Waste Handling.**

Within thirty (30) Days of the Effective Date, Contractor shall submit a Hazardous Waste Handling Protocol to City. The Hazardous Waste Handling Protocol shall set forth procedures that Contractor shall follow to identify and/or Collect Hazardous Waste for proper Disposal. The Hazardous Waste Handling Protocol shall include the manner in which Contractor shall use reasonable business efforts to screen all Solid Waste for Hazardous Waste when tipping Containers into vehicles, such as using driver observation in mirrors when tipping Carts in front of the vehicle. In the event Contractor inadvertently delivers Solid Waste to any Disposal Site or Transfer and Processing Facility that includes Hazardous Waste, Contractor shall make a good faith effort to identify and contact the Customer that discarded the Hazardous Waste and recover the Hazardous Waste handling costs and cooperate with the Disposal Site or Transfer and Processing Facility owners or operators to arrange for proper Disposal under law.

## **ARTICLE 7 CITY'S ABILITY TO CONTROL FLOW OF SOLID WASTE**

### **Section 7.1 Flow Control Option.**

City shall have the absolute ability to choose the location for the delivery and/or Disposal of all Solid Waste (including Recyclables and Green Waste) Collected pursuant to this Agreement. 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 Services Initiation Date, City shall be deemed to have exercised its flow control option under this Section so as to require delivery of all Solid Waste Collected hereunder to the Designated Disposal Site and/or the Contractor's Facilities, all Source Separated Green Waste Collected hereunder to the Designated Disposal Site, and all Source Separated Recyclables Collected hereunder to the Designated Transfer and Processing Facility, 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 Director may notify Contractor in writing that City desires to change its flow control option or that City no longer desires to exercise its flow control option under this Article. In the event that the Director so notifies Contractor of the desire to change the City's flow control option, the written notification shall include the change, including whether the change is to Solid Waste, Source Separated Recyclables and/or Source Separated Green Waste and whether the change involves the Designated Disposal Site, the Designated Transfer and Processing Facility and/or any specific one of Contractor's Facilities. In the event the Director so notifies Contractor of the desire to cease exercising the City's flow control option, Contractor shall have the absolute discretion to utilize any Disposal Site, Transfer and Processing Facility, Material Recovery Facility, or other facility of its choosing to retain, Recycle, process, and Dispose of Solid Waste, Source Separated Recyclables and/or Source Separated Green Waste generated within City, provided the use of such facility by Contractor enables it to meet all other requirements of this Agreement.

## ARTICLE 8 DIVERSION

### Section 8.1 Diversion Requirements.

Contractor shall meet the Diversion percentage goals set forth in this Section for Fiscal Year 4 (2014-15) and Fiscal Year 7 (2017-18) of the Term of this Agreement. The Diversion percentage goals for Fiscal Years 4 and 7 shall be calculated based upon the Base Year, which is Fiscal Year 1 (2011-12).

#### 8.1.1 Base Year Diversion Percentage.

At the end of the Base Year, Contractor shall calculate the percentage of Tonnage of Solid Waste Diverted for the Base Year according to the following:

- a. Calculate the Tonnage of total Solid Waste Collected during the Base Year (BY Total Tonnage); and
- b. Calculate the Solid Waste Disposed of at the Designated Disposal Site or other Disposal Site during the Base Year (BY Disposed Tonnage); and
- c. Subtract the BY Disposed Tonnage from the BY Total Tonnage (BY Tonnage Diverted); and
- d. Divide the Tonnage Diverted by the Total Tonnage (BY Diversion); and
- e. Multiply the Base Year Diversion by 100 (BY Diversion Percentage).

For example:

- a. If BY Total Tonnage = 10,000 Tons; and
- b. If BY Disposed Tonnage = 6,500 Tons; and
- c. Then BY Tonnage Diverted = 3,500 Tons; and
- d. Then the BY Diversion = 0.35; and
- e. Then the BY Diversion Percentage = 35%.

#### 8.1.2 Fiscal Year 4 Goal

At the end of the Base Year, Contractor shall calculate the Diversion percentage goal for Tonnage of Solid Waste Diverted for Fiscal Year 4 according to the following:

- a. Add 1,078.5 Tons to the BY Tonnage Diverted (FY 4 Tonnage Diverted Goal); and
- b. Divide the FY 4 Tonnage Diverted Goal by the BY Total Tonnage (FY 4 Diversion); and
- c. Multiply the FY 4 Diversion by 100 (FY 4 Diversion Percentage Goal).

For example:

- a. If BY Total Tonnage = 10,000 Tons; and
- b. If BY Disposed Tonnage = 6,500 Tons; and
- c. Then BY Tonnage Diverted = 3,500 Tons; and
- d. Then FY 4 Tonnage Diverted Goal = 3,500 + 1,078.5 = 4,578.5 Tons; and
- e. Then FY 4 Diversion = 4,578.5 / 10,000 = 0.45785; and
- f. Then FY 4 Diversion Percentage Goal = 0.45785 X 100 = 45.79%.

#### 8.1.3 Fiscal Year 7 Goal

At the end of the Base Year, Contractor shall calculate the Diversion percentage goal for Tonnage of Solid Waste Diverted for Fiscal Year 7 according to the following:

- a. Add 2,175 Tons to the BY Tonnage Diverted (FY 7 Tonnage Diverted Goal); and



- b. Divide the FY 7 Tonnage Diverted Goal by the BY Total Tonnage (FY 7 Diversion); and
- c. Multiply the FY 7 Diversion by 100 (FY 7 Diversion Percentage Goal).

For example:

- a. If BY Total Tonnage = 10,000 Tons; and
- b. If BY Disposed Tonnage = 6,500 Tons; and
- c. Then BY Tonnage Diverted = 3,500 Tons; and
- d. Then FY 7 Tonnage Diverted Goal =  $3,500 + 2,175 = 5,675$  Tons; and
- e. Then FY 7 Diversion =  $5,675 / 10,000 = 0.5675$ ; and
- f. Then FY 7 Diversion Percentage Goal = 56.75%.

## **Section 8.2 Diversion Enforcement.**

### **8.2.1 Base Year Diversion Goals Report.**

Within thirty (30) Days of the end of the Base Year, Contractor shall provide a written report to City documenting the Diversion percentage goals for Fiscal Year 4 and Fiscal Year 7, along with all documentation to City's satisfaction supporting the calculations of Contractor, including, but not limited to, supporting information establishing the Tonnage of Solid Waste Collected in the Base Year and the Tonnage of Solid Waste Disposed at the Designated Disposal Site or another Disposal Site in the Base Year.

### **8.2.2 Fiscal Years 4 and 7 Diversion Goals Report.**

Within thirty (30) Days of the end of Fiscal Year 4 and the end of Fiscal Year 7, Contractor shall provide a written report to City documenting satisfaction of the Diversion percentage goals for that Fiscal Year, along with all documentation to City's satisfaction supporting the calculations of Contractor.

### **8.2.3 Penalty for Failure to Satisfy Diversion Percentage Goals.**

In the event that Contractor fails to satisfy the Diversion percentage goals for Fiscal Year 4 or Fiscal Year 7, Contractor shall submit payment of a penalty within sixty (60) Days of the end of the Fiscal Year. The penalty shall be calculated according to the following:

- a. Calculate the actual Tonnage Diverted for Fiscal Year 4 or Fiscal Year 7 according to the same methodology provided for the Base Year in Subsection 8.1.1 above (Actual FY 4 Tonnage Diverted or Actual FY 7 Tonnage Diverted); and
- b. Subtract the Actual FY 4 Tonnage Diverted or Actual FY 7 Tonnage Diverted from the FY 4 Tonnage Diverted or the FY 7 Tonnage Diverted calculated in the Base Year pursuant to Subsections 8.1.1 above (Tonnage Not Met); and
- c. Multiply the Tonnage Not Met with the Disposal Fee in that Fiscal Year (Penalty).

For example:

- a. If the Disposal Fee = \$50 per Ton; and
- b. If the Actual FY 4 Tonnage Diverted = 4,078.5 Tons; and
- c. If the FY 4 Tonnage Diverted Goal = 6,078.5 Tons; and
- d. Then Tonnage Not Met = 2,000 Tons; and
- e. Then Penalty = 2,000 Tons x \$50 per Ton = \$10,000.

## **ARTICLE 9 HAZARDOUS WASTE NOTIFICATIONS**

### **Section 9.1 Hazardous Waste Inspection and Notifications.**

Contractor reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Household Hazardous Waste and the right not to Collect Household Hazardous Waste put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Household Hazardous Waste, found or observed in Solid Waste anywhere within City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Household Hazardous Waste unlawfully Disposed of or released on any City property, including storm drains, streets or other public rights-of-way, Contractor shall immediately notify the Director.

### **Section 9.2 Hazardous Waste Diversion Records.**

Contractor shall maintain records showing the types and quantities, if any, of Household Hazardous Waste found in Solid Waste, which was inadvertently Collected from Customers within City, but Diverted from the Designated Disposal Site or other Disposal Sites.

## **ARTICLE 10 CUSTOMER SERVICE**

### **Section 10.1 Customer Service Policy.**

Within thirty (30) Days of the Effective Date, Contractor shall provide a Customer Service Policy to City. The Customer Service Policy shall include procedures, to the satisfaction of the Director, for communicating with Customers and taking, responding to and resolving Customers' questions, Complaints and disputes. Notwithstanding the Customer Service Policy, Contractor shall be subject to the Customer service requirements set forth in this Article.

### **Section 10.2 Container Service.**

#### **10.2.1 Containers Provided by Contractor.**

Contractor shall provide Customers with the following Containers meeting industry quality standards for storage of discarded Solid Waste, Source Separated Recyclables and Source Separated Green Waste pending Collection by Contractor:

- a. All Carts, Bins and Roll-Off Boxes (not compactors) for City and all Customers consistent with Article 5; and
- b. Household Batteries bags for Residential Customers consistent with Subsection 5.9.4; and
- c. Sharps Waste Containers for Residential Customers consistent with Subsection 5.9.5.

### **10.2.2 Container Inventory.**

Contractor shall store unused Containers in a secure location. Contractor shall update its Container inventory in each Annual Report and within seven (7) Days of a request by the Director.

### **10.2.3 Delivery of Containers.**

Upon a Customer request, for reasons of service commencement or lost or stolen Containers, Contractor shall deliver Containers to the Set-Out Site no later than the following Customer's Collection Day. Delivery of Containers pursuant to this Subsection shall be provided by Contractor at no charge to City or the Customers.

### **10.2.4 Pick-Up, Exchange, Decrease or Increase Number of Containers.**

Upon a Customer request, for reasons of service termination or change in service, Contractor shall pick-up, exchange, increase or decrease the number of Containers at the Set-Out Site no later than the following Customer's Collection Day. Pick-up, exchange, increase or decrease the number of Containers pursuant to this Subsection shall be provided by Contractor at no charge to City or the Customers.

### **10.2.5 Maintenance, Repair or Replacement of Containers.**

Contractor shall maintain and repair all Containers. Upon a Customer request or request by the Director, Contractor shall repair or replace Containers that are damaged or constitute a threat to public health and safety, including keeping out rodents, flies and other vectors. A determination by the Director that a Container shall be repaired or replaced shall bind Contractor to do so. Contractor agrees to maintain its Solid Waste containers in City free of graffiti or "tagging." In addition, any emergency Containers placed at schools and at City Hall or other City Facilities Premises pursuant to Article 18 must likewise be kept free of graffiti or "tagging." Contractor shall mark all of its Solid Waste, Recyclables and Green Waste Containers in City with conspicuous notices warning that the discard of Hazardous Waste is prohibited.

### **10.2.6 Collection and Emptying of Containers.**

After emptying each Container as part of the Collection services provided by Contractor under this Agreement, Contractor shall replace it in its Set-Out Site.

## **Section 10.3 Contractor Service Standards.**

### **10.3.1 General Service Requirements.**

Contractor shall perform all services provided under this Agreement in a prompt, thorough, comprehensive, reliable, courteous and professional manner so that Customers receive high-quality Collection services at all times. Contractor shall perform all services under this Agreement regardless of weather conditions and difficulty of Collection, subject to the exceptions set forth in Section 6.2.

### **10.3.2 Customer Litter.**

In the event Contractor repeatedly observes littered Solid Waste outside a Container set out by a Customer for Collection, Contractor shall discuss ways to prevent littered Solid Waste directly with the Customer. In the event that this situation persists, Contractor shall report its discussion with the Customer to City.

### **10.3.3 Contractor Litter.**

Contractor shall immediately clean up and Collect all Solid Waste spilled, scattered or littered while performing the services under this Agreement, including, but not limited to, lifting and emptying Containers and driving from or between Collection stops and tracking Solid Waste onto any alley, street or public place. Contractor shall equip each Collection vehicle with a broom, shovel and absorbent material.

## **Section 10.4 Respect for Property.**

### **10.4.1 Property Damage.**

Contractor shall use due care in entering and exiting Residential Premises, Commercial Premises and City Facilities Premises. Contractor shall use paved surfaces where practicable and avoid crossing landscaped areas. Contractor shall not jump over hedges and fences. Contractor shall close all gates it opened after making Collections. In the event a Customer specifically directs Contractor to drive on private driveways or pavement in the course of providing Solid Waste Handling Services under this Agreement, Contractor may request that the Customer provide Contractor a waiver of damage liability and/or indemnification. Any physical damage caused by the negligent or willful acts or omissions of Contractor to public or private property shall be repaired or replaced by Contractor at Contractor's sole expense. Contractor shall include a description of any Customer notice of damage, including status of resolution, in its Monthly Report set forth in Section 13.4. Except as provided in Article 16 and Subsection 10.4.2, this Agreement does not purport to affect, in any way, Contractor's civil liability to any third parties.

### **10.4.2 Pavement Damage.**

Normal wear and tear on City streets resulting from general vehicular traffic excepted, any damage to City's driving surfaces, whether or not paved, caused by the operation of Contractor's vehicles providing Solid Waste Handling Services within City under this Agreement shall be repaired or replaced by Contractor at Contractor's sole expense. Contractor understands that the exercise of this Agreement may involve operation of its Collection vehicles over private roads and streets. Disputes between Contractor and its Customers as to damage to private pavement are civil matters and Complaints of damage shall be referred to Contractor as a matter within its sole responsibility and as a matter within the scope of Section 16.1.

### **10.4.3 Utilities.**

Any damage to any utilities, whether located on public or private property, resulting from the negligence of Contractor shall be repaired or replaced by Contractor at Contractor's sole expense.

## **Section 10.5 Customer Service Complaints, Standards and Violations.**

### **10.5.1 Customer Service Complaints.**

City and Contractor agree that the protection of public health, safety and well-being require that service Complaints be acted on promptly and that a record shall be maintained in order to permit City and Contractor to identify potential public health and safety problems. Accordingly, all Customers' Complaints shall be directed to Contractor. During Contractor's office hours, Contractor shall maintain a Complaint service log and a telephone answering system. Contractor shall record all Complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and date and manner of resolution of Complaint. Contractor shall maintain this information in a computerized daily service Complaint log. In the case of a Complaint for a missed Collection received on a Customer's Collection Day, Contractor shall make the Collection not later than 5 p.m., if Contractor has been notified by noon, or on the following Business Day after the Complaint is received, if the Complaint was not received until after noon. Any such calls received via Contractor's telephone answering system shall be recorded in the service Complaint log the following Business Day. This service Complaint log shall be available for review by the Director during Contractor's office hours and be accessible to City during business hours via modem. Contractor shall provide a copy of this service Complaint log to City in a format compatible with City's computer system with the Monthly Report required pursuant to Section 13.4.

### **10.5.2 Customer Service Standards.**

Customer care is among the most important aspects of the services to be required of Contractor. Contractor shall perform Customer service at a level that can be measured by the following two (2) standards:

- a. The number of Complaints in any one (1) month period totaling no more than one percent (1%) of the number of Residential Customers served. Any Complaint level in excess of this standard shall be considered a separate violation of this Agreement.
- b. Sufficient telephone line capacity during Contractor's normal office hours to assure that a minimum of ninety percent (90%) of all calls shall be answered before the fourth (4th) ring. Contractor shall ensure that all incoming calls are answered courteously and promptly during Contractor's office hours. Calls shall be answered in less than an average of thirty (30) seconds, and thereafter shall not be placed on hold longer than an average of one (1) minute before talking to a Customer service representative of the Contractor. This standard must be measured quarterly, and Contractor shall not exceed this standard or it shall be considered a separate violation of this Agreement.

### **10.5.3 Customer Service Violations.**

In any twelve- (12-) month period, if Contractor accumulates four (4) or more separate Customer service violations, it shall be deemed a material breach of this Agreement and shall subject Contractor to all remedies which are available to the City under this Agreement or otherwise, provided that City shall follow the procedures for dispute resolution found in Article 19 before declaring any such material breach.

#### **10.5.4 Reimbursement of City Cost.**

Contractor acknowledges that City is not responsible for taking, responding to or resolving Customers' questions, Complaints and disputes. In the event City chooses to take, respond to or resolve any questions, Complaints or disputes, Contractor shall reimburse City for costs incurred in excess of two (2) hours per week.

### **Section 10.6 Customer Privacy and Customer Mailings.**

Contractor shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers, or the composition or contents of a Customer's Solid Waste or Source Separated Recyclables shall not be revealed to any Person, governmental unit, private agency or company, unless required by law or upon authorization of the Customer.

This provision shall not be construed to preclude Contractor from preparing, participating in, or assisting in the preparation of Solid Waste characterization studies or waste stream analyses that may be required by the Act.

Contractor shall not market or distribute mailing lists with the names and addresses of Customers.

The rights accorded Customers pursuant to this Section shall be in addition to any other privacy rights accorded Customers pursuant to federal and state law.

### **Section 10.7 Means of Communicating with Customers and City.**

#### **10.7.1 Office Hours.**

Contractor shall maintain an office with assigned personnel. Contractor's office hours shall be from 8:00 a.m. to 5:00 p.m. Monday-Friday and 8:00 a.m. to 12:00 p.m. on Saturdays when Collection is occurring, excluding Holidays.

#### **10.7.2 Telephone Numbers.**

Contractor's office shall be accessible by a local phone number and a toll-free number. Contractor shall ensure that assigned personnel will answer the telephone during office hours. Contractor shall provide an answering or call-forwarding service system to take Customer messages outside of office hours. Contractor shall answer Customer messages no later than the following Business Day.

Contractor shall maintain an emergency telephone number for use by City personnel only outside office hours. Contractor shall have a representative, or an answering or call-

forwarding service system to contact such representative, available at the emergency telephone number during all hours other than office hours.

At Contractor's expense, its regular and emergency telephone numbers shall be listed in City telephone directories under both Contractor's name and City's name. Contractor shall have the capability of responding to Customers in English, Spanish dialects and other languages necessary for communication between Contractor and its Customers.

### **10.7.3 Telephone Response Standards.**

In addition to the requirements under 10.5.2, Contractor shall comply with the following response standards:

- a. An automatic phone tree shall not have more than two (2) options, such as speaking to an operator in Spanish or indicating if the caller is a Residential or Commercial Customer; and
- b. Install a call tracking system capable of logging all incoming calls, recording the length of time callers are put on hold, recording calls that hang up and aggregating individual records and generating cumulative performance reports.

### **10.7.4 Posting Contact Information.**

Contractor shall post its contact information on all of its written communications with Customers, including, but not limited to Bills, non-Collection notices and newsletters.

### **10.7.5 Web Site.**

Contractor shall maintain a web site with content acceptable to City. Contractor shall post all of the following information on its web site:

- a. Explanation of the Solid Waste Handling Services provided under this Agreement; and
- b. A copy of the current rate schedule; and
- c. A link to City's web site; and
- d. A link to programs or facilities where Customers can legally discard different wastes; and
- e. Contractor's contact information; and
- f. Other information related to Solid Waste management upon City request.

## **Section 10.8 Education and Public Relations.**

All written documents, notices and other printed materials provided to Customers pursuant to this Section shall be submitted to City for approval no less than five (5) Days prior to submission of the materials to Customers.

### **10.8.1 Contractor Education and Public Relations Contribution.**

Contractor shall provide City with a monetary contribution of twenty-five thousand dollars (\$25,000) each Fiscal Year to assist with administrative costs for providing the education and public relations efforts set forth in this Section. Contractor shall provide amounts upon City request during each Fiscal Year up to the total contribution for each Fiscal Year.

**10.8.2 Customer Orientation Packet.**

Contractor shall develop and provide each Customer with a Customer Orientation Packet at the start of services under this Agreement, including the restart of service that has been terminated. The Customer Orientation Packet shall include an explanation of the Customer's current services, an explanation of the Solid Waste Handling Services provided under this Agreement and an explanation of set-out instructions.

**10.8.3 Customer Service Summary.**

Contractor shall provide Customers a Customer service summary annually explaining the Customer's current services provided under this Agreement and notice that an explanation of the Solid Waste Handling Services provided under this Agreement are available on Contractor's web site or upon request.

**10.8.4 Semi-Annual Newsletter.**

Contractor shall produce a semi-annual newsletter designed to promote safe Solid Waste handling, Recycling and Diversion. Contractor shall email the newsletter to Customers that receive Bills on-line and/or request electronic communication.

**10.8.5 Customer Satisfaction Survey.**

City may conduct Customer service satisfaction surveys. Contractor may review and comment upon the survey form and content. Contractor shall cooperate with City in conducting the survey. Contractor may obtain a copy of the survey results.

**10.8.6 Pump Flix.**

Contractor shall provide thirty (30) second spots for one month each quarter of each Fiscal Year up to ten thousand (10,000) spots per month of Pump Flix to City for the purpose of education and public outreach regarding Solid Waste management and handling. Pump Flix are advertisements at gas stations within the Service Area on monitor systems set up on gas pumps. In the event Pump Flix capability is no longer available to Contractor, Contractor shall provide City with equivalent media access mutually agreed upon by the Parties.

**10.8.7 Additional Information.**

Contractor shall produce and distribute additional education materials upon City request at Contractor's expense up to the Contractor monetary contribution set forth in this Section and at City's expense thereafter. Contractor may produce and distribute additional materials subject to approval by City pursuant to this Section.

**ARTICLE 11 OWNERSHIP OF SOLID WASTE**

Except as otherwise provided under State law, ownership and the right to possession of Solid Waste, including Green Waste and Recyclables, shall transfer directly from the Customer to Contractor upon Collection by Contractor. At no time shall City obtain any right of ownership or



possession of Solid Waste or Hazardous Waste placed for Collection and nothing in this Agreement shall be construed as giving rise to any inference that City has any such rights.

## **ARTICLE 12 RATES, FEES AND BILLING**

### **Section 12.1 Maximum Rates.**

In consideration of and as compensation for the performance of Solid Waste Handling Services, Contractor shall, in its sole discretion, establish, charge and collect Customer Rates, which shall not exceed the Maximum Rates. The Maximum Rates shall be the maximum amount Contractor may charge Customers as full, entire and complete compensation due to Contractor pursuant to this Agreement for performance of all Solid Waste Handling Services required by this Agreement. The Maximum Rates as of the Services Initiation Date are provided in Exhibit B. Contractor is under no obligation to charge the Maximum Rates. Contractor shall impose no other charges for services provided to Customers, unless approved in writing by City, except for those charges provided in Exhibit C pursuant to this Article.

### **Section 12.2 Adjustment of Rates.**

Beginning on July 1, 2012, and each July 1 thereafter during the Term of this Agreement, Contractor shall be entitled to an adjustment in the Maximum Rates according to this Section and as shown by example in Exhibit G. Contractor shall be responsible for determining the amount of the adjustments to the Maximum Rates. Not less than sixty (60) Days prior to an adjustment of the Maximum Rates, Contractor shall submit to City the calculated adjustment of the Maximum Rates and any supporting documentation to the satisfaction of City.

#### **12.2.1 Calculation of Rate Adjustment.**

The Maximum Rates shall be adjusted based on a rate adjustment percentage. The rate adjustment percentage shall be comprised of two components: a service component and a disposal component. Both of these components shall be independently calculated and then combined to derive the overall rate adjustment percentage.

The weighting of the components of the rate adjustment percentage shall be as shown in the table below.

<b>Component</b>	<b>Weight</b>
Service	67%
Disposal	33%
<b>Total</b>	<b>100%</b>

These weights are intended to generally reflect the major areas of Contractor's cost structure such that this rate adjustment method strikes a reasonable balance between accuracy and efficiency. In the event that the relative weights of these categories change materially over the term of this Agreement, Contractor or City may petition the other Party to realign the components with Contractor's actual cost structure. Any such realignment shall be subject to the inspection and audit provisions of Article 13.

#### **12.2.2 Service Component.**

The weighted adjustment percentage for the service component shall be equal to the service component adjustment factor multiplied by sixty-seven percent (67%) as shown by example in Exhibit G. The service component adjustment factor shall be based on the percentage change in the CPI from the month of February in the previous year to the month of February in the current year and is calculated as shown by example in Exhibit G. Notwithstanding the percent change in the CPI, the service component adjustment factor shall not exceed five percent (5.0%).

#### **12.2.3 Disposal Component.**

The weighted adjustment percentage for the disposal component shall be equal to the disposal component adjustment factor multiplied by thirty-three percent (33%) as shown by example in Exhibit G. The disposal component adjustment factor shall be based on the percentage change in the Disposal Fee between the twelve (12) month averages of the two (2) prior calendar years and is calculated as shown by example in Exhibit G.

#### **12.2.4 Rate Adjustment Percentage.**

The rate adjustment percentage shall be the sum of the weighted adjustment percentage for the service component and the disposal component as shown by example in Exhibit G. The rate adjustment percentage shall be applied to the Maximum Rates to calculate the new adjusted Maximum Rates for the ensuing Fiscal Year.

#### **12.2.5 Rate Adjustment Dispute.**

Any dispute regarding the computation of a rate adjustment shall be decided by City. A rate adjustment computation decision may be appealed by Contractor in accordance with the procedures provided in Article 19. The Maximum Rates in effect at the time a rate adjustment dispute is submitted to City shall remain in effect pending resolution of that dispute. The date a Maximum Rate is determined to be effective through the dispute resolution procedures provided in Article 19, shall be the next immediate Billing cycle of Contractor after the date of dispute resolution.

### **Section 12.3 Competitive Rate Guarantee.**

Contractor guarantees that upon the Services Initiation Date of this Agreement that the Customer Rates and/or the Maximum Rates shall not be greater than the Comparable Rates charged for Similar Service to Residential and Commercial Customers in the County Franchise Area #2 pursuant to any franchise agreement for Solid Waste Handling Services with the County in effect on the Services Initiation Date of this Agreement.

In the event that, as of the Services Initiation Date, the Customer Rates set by Contractor and/or the Maximum Rates provided in Exhibit B are greater than any of the Comparable Rates for Similar Service in the County Franchise Area #2, City shall notify Contractor of its obligations under this Section. Such notification shall specify the Customer Rates and/or the Maximum Rates that are greater and are subject to adjustment under this Section. Within sixty (60) Days

of receipt of such notice, Contractor shall ensure that any Customer Rates are not greater than the Comparable Rates for Similar Service in the County Franchise Area #2.

#### **Section 12.4 Annual Base Fee and Franchisee Monthly Fees.**

Contractor shall pay to City the Annual Base Fee and Franchisee Monthly Fees as set forth in this Section.

##### **12.4.1 Annual Base Fee.**

Contractor shall submit to City payment of twenty-five thousand dollars (\$25,000) within the first quarter of each Fiscal Year for the Term of this Agreement.

##### **12.4.2 Calculation of Franchisee Monthly Fees.**

The Franchisee Monthly Fees shall be comprised of the Franchise Fee and the Solid Waste and Environmental Services Programs Fee. Contractor shall calculate the Franchisee Monthly Fees as follows:

- a. Calculate the Total Billings for the preceding month; and
- b. Subtract refunds to Customers (Gross Billing); and
- c. Divide the Gross Billing by 1.13 (Net Billing); and
- d. Multiply the Net Billing by 0.05 (Franchise Fee); and
- e. Multiply the Net Billing by 0.08 (SW & ES Programs Fee); and
- f. Add the Franchise Fee and SW & ES Programs Fee together (Franchisee Monthly Fees).

For example:

- a. If Gross Revenue Billed = \$262,000; and
- b. If refunds to Customers = \$2,000; and
- c. Then Gross Billing = \$262,000 – \$2,000 = \$260,000; and
- d. Then Net Billing = \$260,000 / 1.13 = \$230,088.50; and
- e. Then Franchise Fee = \$230,088.50 X 0.05 = \$11,504.43; and
- f. Then SW & ES Programs Fee = \$230,088.50 X 0.08 = \$18,407.08; and
- g. Then Franchisee Monthly Fees = \$11,504.43 + \$18,407.08 = \$29,911.51.

##### **12.4.3 Payment of the Franchisee Monthly Fees.**

Contractor shall pay the Franchisee Monthly Fees for the prior month to City monthly on or before the thirtieth (30th) Day of each month. Should any such due date fall on a weekend or Holiday in which City Hall is closed, payment shall be due on the first Day thereafter in which City Hall is open. Franchisee Monthly Fees shall be submitted to City with the calculation form provided in Exhibit H, which includes a statement certified by an officer of Contractor attesting to the accuracy of the amounts paid.

#### **Section 12.5 Customer Billing.**

##### **12.5.1 Contractor to Bill.**

Contractor shall prepare and mail Bills for services provided by Contractor and shall receive Customer payments according to this Section.

### **12.5.2 Frequency.**

Contractor shall Bill Residential Customers for Cart services bi-monthly in advance of services provided. Contractor shall Bill Residential Customers for Bin services and Commercial Customers for all services monthly in arrears of services provided. Contractor shall submit Bills to Customers no sooner than the first day of the Billing period.

### **12.5.3 Automated Billing and Payment.**

Contractor shall make available to all Customers a web site-based electronic Billing and payment system. This system should allow Customers to view and pay Bills through Contractor's web site. Contractor shall ensure that Customers may choose to cease receiving paper Bills and receive all Bills through email and/or Contractor's web site. Contractor shall ensure that the web site-based electronic Billing and payment system conforms to industry-standard practice for electronic commerce security.

### **12.5.4 Bill Format.**

Contractor shall Bill Customers using a Bill format approved by City, if Customer does not choose to cease receiving paper Bills. Bills shall be payable solely to Contractor and no other Person, including any Affiliate. Contractor shall provide City a sample Bill upon request from City. Contractor shall include inserts, announcements or other written materials with Bills according to Section 10.8.

### **12.5.5 Refunds.**

Contractor shall refund to Customers overcharges, including advance payments for services that Customer subsequently canceled, within thirty (30) Days of Contractor's receipt of Customer payment or Contractor's discovery of the overcharge. Contractor shall pay interest at ten percent (10%) per annum from the date originally overcharged until the date refunded, or lesser amount acceptable to City.

### **12.5.6 Returned Check.**

Contractor may charge a Customer a return check charge as set forth in Exhibit C for any payment made in the form of a check and the check could not be processed for any reason, including, but not limited to insufficient funds available, by the Customer's financial institution and, therefore, is returned to Contractor unpaid.

### **12.5.7 Delinquent Payment.**

Bills payable in advance shall become due on the last day of the service period. Bills payable in advance shall become delinquent in the event of non-payment as of the date payment is due. Bills payable in arrears shall become delinquent no sooner than thirty (30) Days after the date payment is due. Contractor may charge the Customer a delinquency charge as set forth in Exhibit C for each thirty (30) Days the Bill remains unpaid. Contractor may seek remuneration of delinquent payments and charges using any legal means, but in no event shall cause a lien to be placed on the Customer's property. City shall not be liable

for and Contractor shall release City from paying for any Customer's Bill or delinquency charges.

#### **12.5.8 Termination of Service; Restart Service.**

Contractor may send a notice of termination of service for non-payment upon sixty (60) Days of non-payment of the Bill. Contractor may terminate Collection service no sooner than five (5) Days after sending the sixty (60) Day termination notice and may discontinue service until payment in full has been received. Contractor shall provide City a list of delinquent accounts upon request. After a Customer's service is terminated for non-payment, Contractor may charge the Customer a restart service charge as set forth in Exhibit C to resume services.

### **ARTICLE 13 RECORDS AND REPORTING**

#### **Section 13.1 Record Retention.**

In addition to the record retention requirements of Sections 9.2, 13.14 and 17.4, Contractor shall maintain, in electronic form at a minimum, all records relating to the services provided hereunder, including, but not limited to, route maps, customer lists, Billing records, weight tickets, maps, the Act records, and Customer Complaints, for the period during which Collection services are provided pursuant to this Agreement, and an additional period of not less than three (3) years after expiration or termination of this Agreement, or any longer period required by law. In addition, summaries of weight tickets identifying the disposition of Solid Waste Collected in City shall be kept for a period of thirty (30) years.

#### **Section 13.2 Audits.**

City shall have the right, upon reasonable advance notice, to inspect, audit and copy all of Contractor's records relating to Contractor's provision of services pursuant to this Agreement, including, but not limited to, route maps, customer lists, billing records, weight tickets, the Act records and Customer Complaints, Contractor's payment of fees to City and records which may be relevant in the event of an action under CERCLA or related Claims. In the absence of extraordinary circumstances, five (5) Business Days notice shall be considered reasonable. Such records shall be made available to City (or City's designated representative) at Contractor's regular place of business, but in no event outside the County. City shall maintain any confidential or proprietary records of Contractor in confidence and shall not disclose such records except as required by any applicable public records disclosure law. Prior to destruction of records relating to the services provided pursuant to this Agreement, Contractor shall provide copies or originals of such records to City.

#### **Section 13.3 Overpayment or Underpayment.**

Should any examination or audit of Contractor's records reveal an overpayment or underpayment by Contractor, the amount of underpayment, plus interest compounded monthly at the maximum lawful rate, shall be paid by Contractor to City within thirty (30) Days. The amount of any overpayment shall be paid by City to Contractor in the ordinary course of business.

### **Section 13.4 Monthly Reports.**

Monthly Reports shall be submitted to City on a monthly basis no later than the twentieth (20<sup>th</sup>) Day of the following month, transmitted in a format acceptable to City (via e-mail compact disc, and/or printed copy). The Monthly Report shall show the number of Tons Collected and the Tonnage delivered to Disposal Sites and/or Transfer and Processing Facilities, itemized by site or facility. An electronic copy with a copy of the Customer Complaint log shall be submitted with the Monthly Report. Data shall be maintained at Contractor's place of business identifying temporary service Diversion Tonnage, and be accessible to City during normal business hours.

### **Section 13.5 Quarterly Reports.**

In addition to providing a quarterly summary of the Monthly Reports, Quarterly Reports shall include the following regarding Recyclables and Green Waste:

- a. A statement showing, by type of material, Tons received each month and Tons marketed during the month.
- b. A report providing Recycling information and the number of Residential and Commercial Customers participating.
- c. A narrative description of problems encountered and actions taken, including efforts to deter and prevent Scavenging. This is to include a description of Tons rejected for sale after processing (type of material, Tonnage), reason for rejection and Contractor's Disposal method for the rejected materials.
- d. A report of Recycling program promotional activities, including materials distributed by Contractor to its Customers.
- e. A report of the amount and types of Bulky Items Collected including disposition.

### **Section 13.6 Annual Reports.**

By July 20<sup>th</sup> of 2012 and each July 20<sup>th</sup> thereafter that Collection services are provided pursuant to this Agreement, Contractor shall submit to City a written year-end Annual Report, for the preceding Fiscal Year, in a form approved by City. The Annual Report shall include, but not be limited to, the following information:

#### **13.6.1 Prior Year's Activities.**

A report of the activities in City for the prior Fiscal Year, including a cumulative summary of the Quarterly Reports, and information and statistics with respect to City's compliance with the Act, Contractor's public education activities, and a tabulation and summary of Customer Complaints received by Contractor.

#### **13.6.2 Contractor Recommendations.**

An explanation of any changes in integrated waste management, including projections and proposed implementation dates and costs, recommended by Contractor or this Agreement, based on developments in the law or technology. Contractor's recommendations with respect to compliance with the Act shall state the specific requirement of the Act that the implementation of the recommendation is intended to satisfy.

### **Section 13.7 Financial Statement.**

Contractor shall cause an independent certified public accountant to prepare a financial statement with respect to the Solid Waste Handling Services provided under this Agreement for each Fiscal Year within one hundred (100) Days of the close of the Fiscal Year. Contractor shall attach to the financial statement the following:

- a. The accountant's representation that Contractor's financial statement was audited in accordance with generally accepted auditing principles; and
- b. That the financial statement was prepared in accordance with generally accepted accounting principles, which were consistently applied; or
- c. The financial statement fairly presents the financial position, the results of operations and the cash flow of Contractor; or
- d. The Contractor's Chief Financial Officer's statement that no events subsequent to the preparation of the last financial statement submitted under this Agreement have materially changed Contractor's financial status or condition or describing any material changes in Contractor's financial status or conditions since the preparation of the last financial statement.

### **Section 13.8 Reporting Adverse Information.**

Contractor shall provide City two (2) copies (one to the City Manager, one to the City Attorney) of all Claims, reports, pleadings, applications, notifications, notices of violation, communications or other material relating specifically to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, CalRecycle, any local enforcement agency, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

### **Section 13.9 Failure to Report.**

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of this Agreement and shall subject Contractor to all remedies which are available to City under this Agreement or otherwise, provided that City must follow the procedures for dispute resolution found in Article 19 before declaring any such material breach.

### **Section 13.10 City's Review of Contractor's Performance.**

Annually, within ninety (90) days of City's receipt of the Annual Report required by Section 13.6, City shall review the Annual Report and other available information and may hold a public hearing to determine whether Contractor's performance for the Fiscal Year reported on was satisfactory and whether to implement any changes recommended by Contractor. The reports required by this Agreement shall be utilized as the primary basis for review. In addition, any Customer comments or Complaints and any other relevant information may be considered. A Contractor representative shall be entitled to be present and may participate at any public

hearing held by City to review Contractor's performance. If any noncompliance with this Agreement is reported to have occurred, City shall offer Contractor the opportunity to comment and offer information in rebuttal and to correct any deficiencies.

**Section 13.11 Costs.**

All reports and records required under this Agreement shall be furnished at the sole expense of Contractor.

**Section 13.12 Certification.**

Contractor shall provide a certification statement, under penalty of perjury, by the responsible corporate official, that each report submitted pursuant to this Article is true and correct.

**Section 13.13 Submission of Reports.**

Reports shall be submitted to:

City Manager [or designated representative]  
City of Goleta  
201 E. Goleta Blvd.  
Goleta, CA 90633

Contractor agrees that cooperation between Contractor and City is critical to the success of this program. City reserves the right to request from Contractor additional information reasonably and directly pertaining to this Agreement on an "as-needed" basis.

**Section 13.14 CERCLA Defense Records.**

City and Contractor agree that the ability to defend against CERCLA and related litigation is of great importance. For this reason, City and Contractor regard the ability to prove where Solid Waste Collected in City was taken for disposal, as well as where it was not taken, to be relevant. Contractor shall maintain data retention and preservation systems which, in the event of litigation, can establish where Solid Waste Collected in the City was Disposed (and therefore establish where it was not Disposed) and will provide a copy of the reports required by Sections 9.1, "Hazardous Waste Inspection and Notification," 9.2, "Hazardous Waste Diversion Records," 13.4, "Monthly Reports" and 13.5, "Quarterly Reports," to the City Clerk. In addition, Contractor agrees to maintain electronic copies of the foregoing reports for thirty (30) years after the end of the period during which Collection services are to be provided pursuant to this Agreement. Contractor agrees to notify City's Risk Manager and City Attorney before destroying Contractor's copies of such records and Contractor shall provide copies or originals of such records to City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

**ARTICLE 14 THE ACT REPORTING REQUIREMENTS**

Contractor shall cooperate with City in Solid Waste Disposal characterization studies and waste stream audits and shall implement measures adequate to achieve City's source reduction, Recycling and waste stream Diversion goals for the Solid Waste stream covered by this



Agreement. During the period in which Collection services are provided pursuant to this Agreement, Contractor at Contractor's sole expense, shall submit to City information and reports necessary for City to meet its reporting obligations imposed by the Act, and the regulations implementing the Act, for the waste stream covered by this Agreement. Contractor agrees to submit such reports and information on computer discs, or by modem, in format compatible with City's computers, at no additional charge, if requested by City.

## **ARTICLE 15 COMPLIANCE WITH LAWS AND REGULATIONS**

Contractor and City shall comply with all Applicable Laws, specifically including, but not limited to, RCRA, CERCLA, the Act and all applicable ordinances, resolutions, rules and other regulations of City.

## **ARTICLE 16 INDEMNIFICATION**

### **Section 16.1 Indemnification of City.**

Contractor shall protect, defend (with counsel reasonably approved by City), indemnify and hold harmless the Indemnities from and against any and all Claims arising out of or resulting in any way from Contractor's performance of its obligations, including the provision of services, under this Agreement, unless such Claim is due to the sole or active negligence or willful acts of the Indemnities.

Contractor shall protect City and appear in and defend the Indemnities in any Claims and actions by third parties, whether judicial, administrative or otherwise, arising out of or resulting in any way from City's grant of this Agreement to and Contractor's performance of this Agreement, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclables" or the limits of City's authority with respect to the grant of licenses or agreements, exclusive or otherwise, asserting rights under the Commerce Clause (including the Dormant Commerce Clause and federal or state legislation governing the process for the award of Solid Waste contracts) to provide Solid Waste Handling Services, or the necessity or propriety of notice and hearing procedures required to effect any increase in Customer Rates for Contractor's services hereunder (to the extent arising from the acts or omissions of Contractor in connection with any notice and hearing process). This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement, for Claims arising prior to the expiration of the period during which Collection services are to be provided pursuant to this Agreement.

### **Section 16.2 Hazardous Substances Indemnification.**

Contractor agrees to indemnify, defend (with counsel reasonably approved by City), protect and hold harmless the Indemnities from and against any and all Claims of any kind whatsoever paid, suffered or incurred by or against the Indemnities resulting from any repair, cleanup, removal action or response action undertaken pursuant to CERCLA, the H&S Code or other similar federal, state or local law or regulation, with respect to Solid Waste Collected, transported and Disposed of by Contractor. The foregoing indemnity is intended to operate as an agreement pursuant to Section 107(e) of CERCLA and Section 25364 of the H&S Code to defend, protect, hold harmless and indemnify the Indemnities from all forms of liability under CERCLA, the H&S Code or other similar federal, state or local law or regulation.

Notwithstanding any provision herein to the contrary, the foregoing indemnity is expressly conditioned upon the implementation by City of a program for minimization and proper Recycling, treatment and Disposal of Hazardous Waste generated or accumulated by Residential Premises in compliance with the Act, specifically Sections 41500 and 41802(b)(2) of the Public Resources Code. City's implementation of a program for minimization and proper Recycling, treatment and Disposal of Hazardous Waste generated or accumulated by Residential Premises shall be presumed to be in compliance with the Act, specifically Sections 41500 and 41802(b)(2) of the Public Resources Code, unless Contractor or an agency with jurisdiction has notified City that its program is not in compliance, and a final determination has been made that City's program is not in compliance with the Act, specifically Sections 41500 and 41802(b)(2) of the Public Resources Code.

With respect to Hazardous Waste Collected by Contractor pursuant to this Agreement which has been Disposed of at places owned or operated by Contractor, or by an entity under the same ownership and control of Contractor, Contractor shall deliver a Hazardous Substances Indemnification in a form satisfactory to and approved by City.

With respect to Hazardous Waste collected by Contractor pursuant to this Agreement which has been disposed of at places not owned or operated by Contractor or by an entity under the same ownership and control of Contractor, Contractor shall cause the owner or operator of the alternate facility to deliver a Hazardous Substances Indemnification in a form satisfactory to and approved by City. If such indemnification is unavailable, then Contractor shall perform due diligence environmental site assessments of the facility in accordance with current standard practices as accepted by the American Society for Testing and Materials. Contractor shall provide copies of any Environmental Site Assessments to City and shall maintain such for no less than thirty (30) years after termination or expiration of this Agreement.

### **Section 16.3 Proposition 218 Indemnification.**

City intends to comply with all applicable laws concerning the Maximum Rates provided under this Agreement. Upon thorough analysis, the Parties have determined and agree that the Maximum Rates and the Customer Rates for the Solid Waste Handling Services provided under this Agreement are not subject to California Constitution Articles XIIC and XIID because, among other reasons, such services are provided by a private corporation and not by City pursuant to Article 5, Contractor independently establishes, charges and collects the Customer Rates for said services within the limits established in this Agreement pursuant to Article 12, the receipt of said services is voluntary and not required of any property within City and any Owner or Occupant of property within City has the opportunity to avoid the services provided under this Agreement either through self-hauling or use of property in such a manner that Solid Waste is not generated pursuant to Article 2. Nevertheless, this is a legal determination which is subject to changes in the law and further interpretations of the law.

Accordingly, Contractor shall defend, indemnify and hold harmless the Indemnities from and against any and all Claims of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against the Indemnities resulting in any form from the Maximum Rates provided for the Solid Waste Handling Services under this Agreement or in connection with the application of California Constitution Article XIIC and Article XIID to the imposition, payment or collection of the Customer Rates under this Agreement.

Notwithstanding the foregoing, this indemnity shall not extend to any portion of the Maximum Rates or the Customer Rates under this Agreement that is not associated with Contractor's costs in providing service, such as governmental fees, Franchisee Monthly Fees or charges. Nothing herein is intended to imply that California Constitution Articles XIIC and XIID apply to the provision of Maximum Rates for the Solid Waste Handling Services provided under this Agreement or the Customer Rates, rather this section is provided merely to allocate risk of loss as between the Parties.

#### **Section 16.4 The Act Indemnification.**

In addition to its duties under this Agreement, Contractor agrees to implement measures to meet the requirements of the Goleta Municipal Code with respect to the Collected Solid Waste stream covered by this Agreement. Contractor agrees to protect, defend (with counsel reasonably approved by City), indemnify and hold harmless the Indemnities against all fines or penalties imposed by CalRecycle in the event the Diversion, source reduction and Recycling goals of the Act are not met by City with respect to the Collected Solid Waste stream covered by this Agreement as a result of Contractor's failure to perform under this Agreement, or if Contractor's delays in providing information prevent City from submitting reports required by the Act in a timely manner. City and Contractor agree to negotiate with respect to any additional Act-related services, which Contractor and City agree to implement.

### **ARTICLE 17 INSURANCE AND BONDS**

#### **Section 17.1 General Insurance Requirements.**

Contractor shall secure and maintain insurance coverage meeting the requirements set forth in this Article. Contractor may use a combination of primary and excess or Umbrella insurance coverage to satisfy these requirements. If Contractor fails to fully satisfy the coverage requirements set forth herein, Contractor agrees that it shall be liable for any loss, injury, damage, attorney's fees or defense costs, or expenses, that City incurs that would have been insurable under the required coverage, if such coverage was obtained. Contractor further agrees that any failure of City to verify the placement and continued existence of all insurance required under this Article, or City's knowledge that such requirements are not fully satisfied, shall not be considered a waiver of such requirements, or in any way alter Contractor's obligations to provide such coverage, unless the coverage requirements have been amended in writing properly executed by both City and Contractor.

Contractor further agrees that the General Liability Insurance and Automobile Liability Insurance required within this Article shall each include provisions, either by blanket endorsement(s), or by specific endorsement(s), satisfying the following requirements to be documented:

- "The City of Goleta, and its agents, officers, and employees" shall be an additional insured under an ISO CG 2010 11/85 form, or a functional equivalent; and
- All such insurance shall include a waiver of any subrogation rights of that insurer against "The City of Goleta, and its agents, officers and employees"; and
- All such insurance shall contain provisions that the insurance is primary and non-contributing with any other insurance or self-insurance programs maintained by the City of Goleta, and its agents, officers, and/or employees.

Contractor further agrees that the General Liability Insurance and Automobile Liability Insurance required within this Article shall each include provisions that make Contractor responsible for the payment of any deductible or self-insured retention such that City and its agents, officers and employees shall be entitled to a dollar-one defense and indemnity as additional insureds.

In addition, to the extent that any primary or excess liability policy issued to Contractor with limits of liability in excess of the minimum limits stated in this Article provides coverage to an additional insured to the extent required by contract, this Agreement shall be construed to obligate Contractor to obtain additional insured protection for City under that/those policy(ies).

The insurance policies required by this Article shall be issued by an insurance company or companies admitted to do business in the State of California, subject to the jurisdiction of the California Insurance Commissioner and with a rating in the most recent edition of Best's Insurance Reports of size category XV or larger and a rating classification of A+ or better.

#### **Section 17.2 General Liability and Automobile Liability Insurance.**

Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement a Broad Form Comprehensive General Liability (occurrence) policy with a minimum limit of six million dollars (\$6,000,000.00) aggregate and three million dollars (\$3,000,000.00) per occurrence and a Commercial Automobile Liability Insurance policy with a minimum limit of three million dollars (\$3,000,000.00). Said insurance shall protect Contractor and City from any claims for damages for bodily injury, including accidental death, as well as from any claim for property damage, which may arise from operations, performed pursuant to this Agreement.

#### **Section 17.3 Workers' Compensation and Employers' Liability Insurance.**

Contractor shall obtain and maintain in full force and effect throughout the entire term of this Agreement full workers' compensation insurance and Employers' Liability Insurance with a minimum limit of one million dollars (\$1,000,000.00) in accord with the provisions and requirements of the Labor Code of the State of California. Copies of policies and endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice (ten (10) days in the event of termination for non-payment) by certified mail, return receipt requested, has been given to City. The policy shall also be amended to waive all rights of subrogation against the City, its elected or appointed officials, employees, or agents for losses that arise from work performed by the named insured for the City.

#### **Section 17.4 Evidence of Insurance Coverage; Insurance Repository.**

Contemporaneously with the execution of this Agreement, Contractor shall file certificates and/or endorsements of insurance evidencing the above-required insurance coverage with the City Clerk. From time to time thereafter, Contractor shall provide substitute certificates or endorsements at least thirty (30) Days prior to any changes in coverage or limits, or a change in the carrier. In addition, City shall have the right of inspection of all insurance policies required by this Agreement. Contractor also agrees to establish an insurance policy repository and to maintain copies of insurance policies required pursuant to this Agreement for ten (10) years

after the end of the Term during which Collection services are to be provided pursuant to this Agreement. Contractor shall notify City's Risk Manager and City Attorney before destroying copies of such policies, and Contractor shall provide copies or originals of such policies to City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

**Section 17.5 Self-Insurance.**

To the extent provided by law, all or any part of any required insurance may be provided under a plan of self-insurance approved by the State of California.

**Section 17.6 Reduction of CERCLA and Other Liability.**

If necessary, City and Contractor agree to meet annually in the fourth calendar quarter of each calendar year to discuss ways to reduce their respective potential CERCLA and other liabilities to third parties.

**Section 17.7 Cash and Faithful Performance Bonds.**

Prior to the start of Collection services under this Agreement, Contractor shall deposit funds, on terms satisfactory to City, in an interest-bearing City-named account at an institution satisfactory to both City and Contractor, or provide a letter of credit, from an institution satisfactory to City, at the option of Contractor, in the amount of five hundred thousand dollars (\$500,000.00). (The funds on deposit and the letter of credit are referred to collectively in this Agreement as the "Cash Bond".) In addition to the Cash Bond, Contractor, at its option, shall deposit either a letter of credit or a performance bond (collectively referred to as "Performance Bond") in the amount of one million dollars (\$1,000,000.00), or in such lesser amount as the City Manager may determine to provide adequate protection to City. The Cash Bond (including any letter(s) of credit) and the Performance Bond (including any letter of credit) (collectively referred to as "Bonds") shall be on terms acceptable to the City Attorney. The Bonds shall serve as security for the faithful performance by Contractor of all the provisions and obligations of this Agreement. All interest on a cash deposit, if made, shall accrue to Contractor .

Upon Contractor's failure to faithfully perform its obligations under this Agreement, the Bonds may be assessed by City, for purposes including, but not limited to:

- Reimbursement of costs borne by the City to correct violations of the Agreement not corrected by Contractor, after City provides notice in accordance with Article 19.
- To provide monetary remedies or to satisfy damages assessed against Contractor due to a material breach of this Agreement; or
- To satisfy an order of the City Council.

Contractor shall deposit a sum of money or a replacement instrument sufficient to restore the Bonds to the original amount within thirty (30) Days after notice from the City that any amount has been withdrawn from the Bonds. Contractor shall be relieved of the foregoing requirement to replenish the Bonds during the pendency of an appeal from City's decision to draw on the Bonds. The amount of the Bonds shall be adjusted annually on the anniversary of the Effective Date of this Agreement. The annual adjustment shall be in the annual percentage February-to-February change in the Consumer Price Index.

In the event City draws on the Bonds, all of City's costs of Collection and enforcement of the provisions relating to the Bonds called for by this Article, including reasonable attorneys' fees and costs, shall be paid by Contractor.

Any decision or order of City under this Article may be appealed by Contractor through the dispute resolution procedures provided by Article 19.

## **ARTICLE 18 EMERGENCY SERVICE**

Should Contractor for any reason whatsoever, except the occurrence or existence of any of the events or conditions set forth in Section 23.2, "Force Majeure," below, refuse or be unable for a period of more than forty-eight (48) hours, to Collect a material portion or all of the Solid Waste which it is obligated under this Agreement to Collect, and as a result, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager in the reasonable exercise of the City Manager's discretion, should find that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right to contract with another Solid Waste enterprise to collect and transport any or all Solid Waste which Contractor is obligated to collect and transport pursuant to this Agreement. City shall provide twenty-four (24) hours prior written notice to Contractor during the period of such emergency, before contracting with another solid waste enterprise to collect and transport any or all Solid Waste which Contractor would otherwise collect and transport pursuant to this Agreement, for the duration of period during which Contractor is unable to provide such services. In such event Contractor shall identify sources from which such substitute solid waste services are immediately available, and shall reimburse City for all of its expenses for such substitute services during period in which Contractor is unable to provide collection and transportation services required by this Agreement.

Contractor shall assist City in the event of major disaster, such as an earthquake, storm, flood, fire, riot or civil disturbance, by providing Collection vehicles and drivers normally assigned to the City at no charge to City. Within thirty (30) Days of the Services Initiation Date, Contractor shall procure, equip and maintain two (2) mobile disaster response/communications trailers for use during and/or after the major disaster for an amount of time determined to be needed by and located at sites designated by City at the request of the commanding emergency operations coordinator.

Contractor shall furnish to the City upon request at no additional charge emergency Containers to store materials and supplies to be used in the event of an emergency. Said Containers shall be placed at all public schools and at City Hall or other City Facilities identified by the City Manager.

## **ARTICLE 19 ADMINISTRATIVE REMEDIES; TERMINATION**

### **Section 19.1 Notice; Response; Resolution; Appeal.**

#### **19.1.1 Notice of Deficiencies; Response.**

If the Director determines that Contractor's performance pursuant to this Agreement may not be in conformity with the provisions of this Agreement, the Act (including, but not limited to,

requirements for Diversion, source reduction and Recycling as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to, the laws governing transfer, storage or Disposal of Solid Waste and Hazardous Waste, the Director may advise Contractor in writing of such suspected deficiencies, specifying the deficiency in reasonable detail. The Director, in any written Notification of Deficiencies, shall set a reasonable time within which Contractor is to respond. Unless the circumstances necessitate correction and response within a shorter period of time, Contractor shall respond to the written Notification of Deficiencies within thirty (30) Days from the receipt by Contractor of such written notice. Contractor may request additional time to correct deficiencies. City shall approve reasonable requests for additional time.

#### **19.1.2 Review by Director.**

The Director shall review any written response from Contractor and decide the matter. If the Director's decision is adverse to Contractor, the Director may order remedial actions to cure any deficiencies, assess the Cash Bond or invoke any other remedy in accordance with this Agreement and, in the event the Director determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. The Director shall promptly inform Contractor, of the Director's decision. In the event the decision is adverse to Contractor, the Director shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the Director's decision and any remedial action taken or ordered. An adverse decision by the Director shall be final and binding on Contractor unless Contractor files a "Notice of Appeal" with the City Clerk (with copies to the City Manager and City Attorney) within thirty (30) Days of receipt of the notification of the adverse decision by the Director.

#### **19.1.3 Notice of Appeal.**

In any "Notice of Appeal" Contractor shall state its factual contentions and include any relevant affidavits, documents, photographs and videotapes which Contractor may choose to submit. In addition, Contractor shall include all of its legal contentions, citing provisions of the Agreement or other laws to support its contentions.

#### **19.1.4 Review by City Manager.**

Within thirty (30) Days of receipt by the City Clerk of a Notice of Appeal, the City Manager shall decide the matter. If the City Manager's decision is adverse to Contractor, the City Manager may order remedial actions to cure any deficiencies, assess the Cash Bond or invoke any other remedy in accordance with this Agreement; and, in the event the City Manager determines that there has been a material breach and that termination is the appropriate remedy, terminate the Agreement. In addition to the foregoing actions, the City Manager may refer the matter to the City Council for proceedings in accordance with Sections 19.2 and 19.3, below. The City Manager shall promptly inform Contractor of the City Manager's decision. In the event the City Manager's decision is adverse to Contractor, the City Manager shall inform Contractor, in writing, of the specific facts found and evidence relied on, and the legal basis in provisions of the Agreement or other laws for the City Manager's decision and any remedial action taken or ordered.

### **19.1.5 Appeal.**

An adverse decision by the City Manager shall be final and conclusive unless Contractor files a "Notice of Appeal to the City Council" with the City Clerk (and serves a copy, by mail, on the City Manager and the City Attorney) within ten (10) Days of receipt of the decision of the City Manager. A "Notice of Appeal to the City Council" shall state the factual basis and all legal contentions and shall include all relevant evidence, including affidavits, documents, photographs and videotapes, which Contractor may choose to submit.

### **Section 19.2 City Council Hearing.**

If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by Contractor, the City Council will set the matter for an administrative hearing and act on the matter. If the City Council elects to hear the matter, the City Clerk shall give Contractor fourteen (14) Days written notice of the time and place of the administrative hearing. At the hearing, the City Council shall consider the administrative record, consisting of the following:

- a. A Staff Report by the City Manager, summarizing the proceedings to date and outlining the City Council's options.
- b. The Director's written Notification of Deficiencies;
- c. Contractor's response to the Notification of Deficiencies;
- d. The Director's written notification to Contractor of adverse decision;
- e. Contractor's Notice of Appeal;
- f. The City Manager's written notification to Contractor of adverse decision; and
- g. The Notice of Appeal to the City Council.

Contractor's representatives and other interested persons shall have a reasonable opportunity to be heard.

### **Section 19.3 City Council Determination.**

Based on the administrative record, the City Council shall determine by resolution whether the decision or order of the City Manager should be upheld. A tie vote of the City Council shall be regarded as upholding the decision of the City Manager. If, based upon the administrative record, the City Council determines that the performance of Contractor is in breach of any term of this Agreement or any provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its discretion, may order Contractor to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement. The City Council may not terminate the Agreement unless it determines that Contractor is in material breach of a material term of this Agreement or any material provision of any applicable federal, state or local statute or regulation. Contractor's performance under the Agreement is not excused during the period of time prior to a final determination as to whether or not Contractor performance is in material breach of this Agreement, or the time set by City for Contractor to discontinue a portion or all of its services pursuant to this Agreement. The decision or order of the City Council shall be final and conclusive. Contractor has the right to seek judicial review from an appropriate court solely as indicated in Article 20. With the exception of draws on the Cash Bond, the execution of any of City's remedies under this Article shall be stayed until Contractor has exhausted its appeals under this Article and Article 20.



## **Section 19.4 Reservation of Rights by City.**

### **19.4.1 Right to Terminate.**

Subject to Contractor's rights and exhaustion of its appeals under this Article and Article 20, City further reserves the right to terminate this Agreement in the event of any material breach of this Agreement, including, but not limited to any of the following:

- a. If Contractor practices, or attempts to practice, any fraud or deceit upon City, or practiced any fraud or deceit or made any intentional misrepresentations in the negotiations which preceded the execution of this Agreement;
- 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 fails to provide or maintain in full force, effect and amount, the workers compensation, liability and indemnification coverage, Cash and Performance Bonds as required by this Agreement;
- d. If Contractor violates any orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement, in any material manner, provided that Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred until a final decision adverse to Contractor is entered;
- e. If Contractor ceases to provide Solid Waste Handling Services as required under this Agreement over a substantial portion of the Service Area for a period of two (2) Days or more, for any reason within the control of Contractor;
- f. If Contractor fails to make any payments required under this Agreement or refuses to provide City with required information, reports or test results as to a material matter in a timely manner as provided in this Agreement;
- g. Any other act or omission by Contractor which materially violates the terms, conditions or requirements of this Agreement and which is not corrected or remedied within the time set forth in the written Notification of Deficiencies or if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such alleged deficiencies within the time set forth in such notice and diligently effect such correction or remedy thereafter.

### **Section 19.5 Cumulative Rights.**

City's rights of termination are in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

## **ARTICLE 20 APPEAL TO JUDICIAL COURT; HEARING PROCEDURES**

Either party to this Agreement at any time after exhaustion of administrative remedies, if applicable, and following the appeal procedures set forth in Articles 19, if applicable, may appeal a disputed matter to the appropriate Judicial Court having Jurisdiction pursuant to California Code of Civil Procedure section 1094.5. The venue of any proceeding hereunder shall be as indicated in Section 23.5.

## **ARTICLE 21 ADDITIONAL REMEDIES**

In addition to the remedies set forth above, City shall have the following rights in the event of Contractor's material breach and failure to cure following written notice from the City and as provided in Article 19:

The right to contract with others to perform the services otherwise to be performed by Contractor; and

The right to obtain damages and/or injunctive relief. Both parties recognize and agree that in the event of a breach under the terms of this Agreement by Contractor, City or Contractor may suffer irreparable injury and incalculable damages sufficient to support injunctive relief to enforce the provisions of this Agreement and to enjoin the breach thereof.

## **ARTICLE 22 TRANSFER OF RIGHTS; CITY CONSENT; FEES**

### **Section 22.1 Transfer.**

#### **22.1.1 Transfer Prohibited Without City Approval.**

The rights granted by this Agreement shall not be transferred, sold, hypothecated, sublet or assigned (collectively "transferred"), nor shall any of the rights or privileges herein be transferred, either in whole or in part, nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, either by act of Contractor or by operation of law, without the prior written consent of City expressed by a resolution of the City Council, except as otherwise provided in Subsection 22.1.2. The decision to consent to any transfer shall be at the sole discretion of City. Any attempt to do any of the foregoing with respect to any of the rights herein without the consent of City shall be void.

#### **22.1.2 Corporate Transfers.**

Any dissolution, merger, consolidation, change in control or other reorganization of Contractor resulting in the transfer of more than fifty percent (50%) of the voting stock in Contractor shall be deemed a transfer of this Agreement, provided that the following transfers shall not be considered in computing whether a cumulative total of more than fifty percent (50%) of the voting stock has been transferred:

- a. Transfers to persons who are related by blood or marriage to the transferring shareholder or to a trust established for the benefit of the transferring shareholder or such or such persons; and
- b. Transfers resulting from the death of the shareholder whether such transfers are made pursuant to the will of the deceased shareholder, an inter-vivos trust instrument or the laws of intestacy; and
- c. Any transfer of stock of Contractor to Persons who were shareholders of Contractor as of the Effective Date. Such shareholders are Mario A. Borgatello, David Borgatello, Anthony Borgatello, Brian Borgatello and Kathy Borgatello-Koeper.

### **22.1.3 Transfer Approved; Payment of Transfer Fee.**

In the event of a transfer of this Agreement, each and all of the provisions, agreements, terms, covenants and conditions herein contained to be performed by Contractor shall be binding upon any transferee.

In the event of a transfer of this Agreement, Contractor shall pay to City a transfer fee within thirty (30) Days of the date the transfer is effective. The amount of the transfer fee paid to City shall depend upon the number of years remaining in the Term of this Agreement as of the date of the transfer according to the table below. Therefore, if the Term of the Agreement is extended, the amount of the transfer fee shall be determined based upon the number of years then remaining in the Term as of the date of the transfer. If City does not receive the transfer fee within thirty (30) Days of the date of the transfer, City shall have the right to terminate this Agreement.

<b>Number of Years Remaining in the Term of Agreement</b>	<b>Amount of Assignment Fee</b>
More than 7	\$1,000,000.00
Between 6 and 7	900,000.00
Between 5 and 6	800,000.00
Between 4 and 5	700,000.00
Between 3 and 4	600,000.00
Between 2 and 3	500,000.00
Between 1 and 2	400,000.00
Less than one year	\$300,000.00

## **ARTICLE 23 GENERAL PROVISIONS**

### **Section 23.1 Acceptance and Waiver.**

Contractor agrees to be bound by and comply with all the requirements of this Agreement. Contractor waives any right or claim to serve City or any part of 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 City Franchise Agreement with Marborg as of the Services Initiation Date, agrees to waive any and all rights under the Prior City Franchise Agreement with Marborg, and agrees to release and hold City harmless from any of City's obligations under that agreement (excepting, however, the right to compensation for services provided at any rates approved by City up to the Services Initiation Date); provided, however, nothing contained in this provision is intended to or shall relieve Contractor from any obligation existing under the Prior City Franchise Agreement with Marborg 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 City Franchise Agreement with Marborg 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 the Act shall survive the termination of the Prior City Franchise Agreement with Marborg.

**Section 23.2 Force Majeure.**

Contractor shall not be in default under this Agreement in the event that the Collection, transportation and/or Disposal services of Contractor are temporarily interrupted for any of the following reasons: riots; war or national emergency declared by the President or Congress and affecting City; sabotage; civil disturbance; insurrection; explosion; natural disasters such as floods, earthquakes, landslides and fires; strikes, lockouts and other labor disturbances; or other catastrophic events which are beyond the reasonable control of Contractor. "Other catastrophic events" does not include the financial inability of Contractor to perform or failure of Contractor to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public entity where such failure occurs where Contractor has failed to exercise reasonable diligence. In the event a labor disturbance interrupts Collection and transportation of Solid Waste, and/or Disposal of Solid Waste by Contractor as required under this Agreement, City may elect to exercise its rights under Article 19.

**Section 23.3 Computer Hardware and Software.**

Contractor will be required to obtain all necessary computer software, hardware, supplies, personnel and training at Contractor's expense to comply with the City's reporting requirements. Contractor will incur all costs of moving computers, including phone lines in the event they need to relocate. Contractor will maintain a computerized data base, with the capacity to maintain an account history of at least eighteen months. Any older account information will be maintained on diskettes, tape, zip drive, or other electronic format for the full term of the contract and a period of three (3) years after termination or expiration of this Agreement, except as otherwise expressly provided for herein. City shall have access to these records during regular business hours.

**Section 23.4 Independent Status.**

Contractor is an independent entity and not an officer, agent, servant or employee of City. Contractor is solely responsible for the acts and omissions of its officers, agents, employees, Contractors and sub-contractors, if any. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Contractor, nor an arrangement for the disposal of hazardous substances. Contractor nor its officers, employees, agents or sub-contractors shall obtain any rights to retirement or other benefits, which accrue to City employees.

**Section 23.5 Law to Govern; Venue.**

The law of the State of California shall govern this Agreement without regard to any otherwise governing principles of conflicts of laws. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of California in which City is located.

**Section 23.6 Act Amendments.**

This Agreement is part of City's efforts to comply with the provisions of the California Integrated Waste Management Act of 1989, ("Act") as it from time to time may be amended and as implemented by the regulations of the California Integrated Waste Management Board (or its successor agency) ("Regulations"), as they from time to time may be amended, and the City's Source Reduction and Recycling Element, as it may be amended from time to time. In the event that the Act or other state or federal laws or regulations enacted or amended after this Agreement has been executed prevent, preclude, or eliminate the need for compliance with one or more provisions of this Agreement, or significantly increase Contractor's costs, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. In the case of an amendment to the laws which has the effect of eliminating the need for a service provided for in this Agreement and City informs Contractor that City desires to discontinue the service, City and Contractor shall negotiate a reduction in rates. In the case of an amendment to the laws that increases the cost of Contractor's service, Contractor may seek a rate increase to offset the costs directly attributable to the amended or newly enacted provision of law or regulations.

**Section 23.7 Amendments.**

All amendments to this Agreement shall be in writing, duly executed by the parties. Purported oral amendments shall be void and of no force or effect.

**Section 23.8 Notices.**

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

To City: City Manager  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

Copy to: Director of Community Services  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

Copy to: Goleta City Attorney  
City of Goleta  
130 Cremona Drive, Suite B  
Goleta, CA 93117

To Contractor: Mr. Mario A. Borgatello  
Marborg Industries

728 Yanonali  
Santa Barbara, CA 93103

Copy to: Peter Brown, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101-2706

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 effective on the date personally served or, if mailed, upon the date of the return receipt.

**Section 23.9 Savings Clause and Entirety.**

If any non-material provision of this Agreement shall for any reason be 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.

**Section 23.10 Joint Drafting.**

This Agreement was drafted jointly by the parties to this Agreement.

**Section 23.11 Attorney's Fees.**

In the event that litigation is brought by any Party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing Party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions herein.

**Section 23.12 Entire Agreement.**

This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

**IN WITNESS WHEREOF**, City and Contractor have caused this Agreement to be executed as of the date last written below.

**CITY:**

**City of Goleta**,  
a California municipal corporations

By: \_\_\_\_\_  
Margaret Connell, Mayor

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Deborah Constantino, City Clerk

**APPROVED AS TO ADMINISTRATION:**

\_\_\_\_\_  
Daniel Singer, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Tim W. Giles, City Attorney

**CONTRACTOR:**

**Marborg Industries**,  
a California corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**DEFINITIONS**



**A-1 Act.**

“Act” means the California Integrated Waste Management Act of 1989, California Public Resources Code Sections 40000, *et. seq.*, as currently in force and as it may hereafter be amended from time to time and as implemented by the regulations of the CalRecycle.

**A-2 Affiliate.**

“Affiliate” means a Person which is related to Contractor by virtue of direct or indirect ownership interest in common management. An Affiliate includes a Person in which Contractor owns a direct or indirect ownership interest, a Person which has a direct or indirect ownership interest in Contractor and/or a Person which is also owned, controlled or managed by any Person or individual which has a direct or indirect ownership interest in Contractor.

**A-3 Agreement.**

“Agreement” means this Agreement, including all exhibits, as may be amended.

**A-4 Applicable Law.**

“Applicable Law” means all federal, State, and local laws, regulations, rules, orders, judgments, decrees, permits, approvals or other requirements of any governmental agency having jurisdiction over the Collection, transportation, processing and Disposal of Solid Waste, Recyclables, Green Waste and other materials Collected pursuant to this Agreement that are in force on the Effective Date and as they may be enacted, issued or amended during the Term.

**A-5 Backyard Cart Service.**

“Backyard Cart Service” means the provision of Collection services to a SFD in the rear or side of the SFD or other Set-Out Site of the Cart instead of Curbside.

**A-6 Bill or Billing.**

“Bill(s)” or “Billing(s)” means statements of charges for services rendered by Contractor to Customers for the Collection of Solid Waste, Recyclables, Green Waste and other services provided by Contractor pursuant to **Article X**.

**A-7 Bin.**

“Bin(s)” means a metal Container with a hinged lid and capacity of one (1) to fifteen (15) cubic yards, which is emptied by a front-loading Collection vehicle.

**A-8 Bulky Items.**

“Bulky Items” means large Solid Waste or other discarded waste that cannot or would not typically be accommodated within a Cart including, but not limited to, furniture (including chairs, sofas, mattresses, and rugs); White Goods (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing and small household appliances); Green Waste; E-Waste (including stereos, televisions, laptop computers, computers and computer monitors, VCRs and microwaves); fluorescent bulbs; Household Batteries; and clothing. Bulky Items do not include

abandoned automobiles, Construction and Demolition Debris or items requiring more than two persons to remove.

**A-9 Business Day.**

“Business Day(s)” means days (i.e., Monday through Saturday) during which Contractor’s office is open to do business with the public. Business Days do not include Holidays or Sundays.

**A-10 CalRecycle.**

“CalRecycle” means the California Department of Resources, Recycling and Recovery, or any successor agency.

**A-11 Cart.**

“Cart” means a plastic Container with a hinged lid and capacities of thirty-two (32), sixty-four (64) and ninety-six (96) gallons.

**A-12 CERCLA.**

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, *et seq.*, as may be amended and regulations promulgated thereunder.

**A-13 City.**

“City” means the City of Goleta, California, a municipal corporation, and all the territory lying within the municipal boundaries of City as it currently exists, or as such boundaries may be adjusted.

**A-14 City Facilities Premises.**

“City Facilities Premises” means premises that are owned and/or operated by City or are otherwise public facilities, including, but not limited to, City facilities, parks and opens spaces and City and the Metropolitan Transit District bus shelters and public receptacles identified at the locations set forth in Exhibits D.

**A-15 Claim.**

“Claim(s)” means a claim, actual damages, natural resources damages, injuries, costs, response, remediation and removal costs, losses, liabilities, causes of action, judgments, fines, penalties, interest, and expenses, including, but not limited to, reasonable attorney’s and expert’s fees.

**A-16 Collect or Collection.**

“Collect” or “Collection” means to take physical possession, transport, and remove.

**A-17 Commercial or Commercial Premises.**

“Commercial” or “Commercial Premises” means any premises that is not a Residential Premises or City Facility Premises upon which Solid Waste is generated or accumulated.

**A-18 Commercial Recyclables Collection Service.**

“Commercial Recyclables Collection Service” means Collection of Source Separated Recyclables from Commercial Customers in the Service Area and the delivery of the Recyclables to the Designated Transfer and Processing Facility.

**A-19 Commercial Solid Waste Collection Service.**

“Commercial Solid Waste Collection Service” means Collection of Solid Waste from Commercial Customers in the Service Area and the delivery of the Solid Waste to the Designated Disposal Site or Contractor’s Facilities.

**A-20 Comparable Rate.**

“Comparable Rate” means the portion of the rate received by the County’s Solid Waste Handling Services provider, whether it be Contractor or another Person, for Similar Services.

**A-21 Complaint.**

“Complaint” means a distinct grievance, criticism, or objection in the form of a written letter, email or telephone call either to City or to Contractor regarding Contractor’s performance of its duties and obligations under this Agreement. Typical “Complaints” concern missed pick-ups that are not corrected, property damage caused by Contractor, unresponsiveness to requests, billing errors, and similar issues. “Complaints” exclude normal or standard service requests (e.g., exchanging a Bin or Cart), and criticisms directed at City’s Solid Waste Ordinance and its provisions.

**A-22 Construction and Demolition Debris.**

“Construction and Demolition Debris” means discarded building materials, recyclable construction and demolition materials, wood, packaging, plaster, rock or brick, soil, drywall, cement and rubble resulting from construction, remodeling, repair and demolition operations.

**A-23 Consumer Price Index (CPI).**

“Consumer Price Index” or “CPI” means the Consumer Price Index for All Urban Consumers for the Los Angeles-Riverside-Orange County Area not seasonally adjusted, CUURA421SA0.

**A-24 Container.**

“Container” means any receptacle used for temporary storage of Solid Waste, Recyclables, Green Waste and other materials Collected pursuant to this Agreement including, but not limited to, metal or plastic cans, Carts, Bins, tubs and Roll-Off Boxes.

**A-25 Contractor.**

“Contractor” means Marborg Industries, a California corporation, or any successors.

**A-26 Contractor’s Facilities.**

“Contractor’s Facilities” means the Construction and Demolition (C&D) Recycling and Transfer Facility located at 119 N. Quarantina Street, Santa Barbara, California, and the Marborg Goleta Buyback Center.

**A-27 County.**

“County” means the County of Santa Barbara.

**A-28 County Franchise Area #2.**

“County Franchise Area #2” means the unincorporated area of the County historically designated as Zone 2 by the County.

**A-29 Curbside.**

“Curbside” means the Set-Out Site for Collection where Carts, Bins or loose materials are placed on the street or alley against the face of the curb, or where no curb exists, placed not more than five (5) feet from the outside edge of the street or alley.

**A-30 Customer.**

“Customer” means a Generator of Solid Waste receiving Solid Waste Handling Services from Contractor within City pursuant to this Agreement. The Customer may be the Occupant or Owner of the Residential Premises or Commercial Premises.

**A-31 Customer Rates.**

“Customer Rates” means Contractor’s charges to Customers for the provision of Solid Waste Handling Services under this Agreement.

**A-32 Customer’s Collection Day.**

“Customer’s Collection Day” means the day of a week that Contractor regularly Collects Solid Waste from a Residential Premises or Commercial Premises.

**A-33 Day.**

“Day” means calendar day unless otherwise specified.

**A-34 Designated Disposal Site.**

“Designated Disposal Site” means the Tajiguas Landfill located at 14470 Calle Real, Goleta, California, which is owned and operated by the County.

**A-35 Designated Transfer and Processing Facility.**

“Designated Transfer and Processing Facility” means the South Coast Recycling and Transfer Station located at 4430 Calle Real, Santa Barbara, California, which is owned and operated by the County.

**A-36 Director.**

“Director” means the Director of the City’s Community Services Department or his or her designee.

**A-37 Dispose or Disposal.**

“Dispose” or “Disposal” means the final disposition of Solid Waste Collected.

**A-38 Disposal Fee.**

“Disposal Fee” means the fee paid by Contractor to Dispose of Solid Waste at the Designated Disposal Site, otherwise known as a “tipping fee.”

**A-39 Disposal Site.**

“Disposal Site” means the place, location, tract of land, area, or premises in use, intended to be used or which has been used for the landfill Disposal of Solid Waste Collected, including the Designated Disposal Site.

**A-40 Diversion.**

“Diversion” or “Divert” means activities which reduce or eliminate the amount of Solid Waste from Disposal at a Disposal Site.

**A-41 Effective Date.**

“Effective Date” means the date this Agreement becomes effective as identified in Section 4.1.

**A-42 Electronic Waste (E-Waste).**

“Electronic Waste” or “E-Waste” means “Covered Electronic Wastes” as defined in the Act, California Public Resources Code Section 42463, in addition to waste that is powered by batteries or electricity, including electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPUs), laptop computers, and peripherals (e.g., external computer hard drives, computer keyboards, computer mice, and computer printers).

**A-43 Environmental Laws.**

“Environmental Laws” means all federal and State statutes, County and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Act; CERCLA; RCRA; the Clean Water Act, 33 U.S.C. Sections 1251, *et seq.*; the Toxic Substance Control Act; the Occupational Safety and Health Act, 29 U.S.C. Sections 651, *et seq.*; the California Hazardous Waste Control Act, California Health and Safety Code Sections 25100, *et seq.*; the Porter-Cologne Water Quality Control Act, California Health and

Safety Code Sections 25249.5, *et seq.*; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

**A-44 Fiscal Year.**

“Fiscal Year” means the period commencing July 1<sup>st</sup> and ending June 30<sup>th</sup> each year.

**A-45 Franchise Fee.**

“Franchise Fee” means and consists of five percent (5%) out of the thirteen percent (13%) Franchisee Monthly Fee.

**A-46 Franchisee Monthly Fees.**

“Franchisee Monthly Fees” means the fees or assessment imposed by City on Contractor because of its status as party to this Agreement and which, *inter alia*, is intended to offset the City’s expenses in administering the Franchise and to compensate City for wear, tear and damage to its streets, sidewalks, curbs and gutters and other infrastructure resulting from the exercise of the Franchise, the expenses of administering programs for Solid Waste and other environmental services, reporting requirements under the Act and other related expenses. The Franchisee Monthly Fee is thirteen percent (13%) of the net billings as set forth in Section 12.5.

**A-47 Generator.**

“Generator” means any Person whose act or process produces Solid Waste, Recyclables or Green Waste, or whose act first causes Solid Waste to become subject to regulation.

**A-48 Green Waste.**

“Green Waste” means untreated and unpainted wood, leaves, grass clippings, weeds, pruning, brush, branches, dead plants, tree trimmings, dead trees and other organic wastes generated from landscapes and/or gardens. Green Waste does not include materials not normally produced from gardens or landscape areas, such as brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil, and painted or treated wood.

**A-49 Hazardous Waste.**

“Hazardous Waste” is a material or mixture of materials which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged, or any waste which is regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

- a. “Hazardous Waste” pursuant to Section 40141 of the California Public Resources Code, regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code, all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.2, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100, *et seq.*, and future amendments

to or recodification of said statutes or regulations promulgated thereunder, including Title 23 of the California Code of Regulations Sections 2521 and 2522;

- b. Materials regulated under RCRA;
- c. Materials regulated under the Toxic Substance Control Act;
- d. Materials regulated under CERCLA;
- e. Materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste; and
- f. Household Hazardous Waste.

Where there is a conflict in the definitions employed by two or more agencies having jurisdiction over Hazardous Waste, the term "Hazardous Waste" shall be construed to have the broader, more encompassing definition.

**A-50 Holiday(s).**

"Holidays" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

**A-51 Holiday (Christmas) Trees.**

"Holiday (Christmas) Trees" means trees targeted for diversion that were purchased and used in celebration of Christmas and other Holidays in December and January.

**A-52 Household Batteries.**

"Household Batteries" means disposable or rechargeable dry cells (e.g., A, AA, AAA, B, C, D, 9-volt, button-type) commonly used as power sources for household or consumer products including, but not limited to, nickel-cadmium, nickel metal hydride, alkaline, mercury, mercuric oxide, silver oxide, zinc oxide, nickel-zinc, nickel iron, lithium, lithium ion, magnesium, manganese, and carbon-zinc batteries, but excluding automotive lead acid batteries.

**A-53 Household Hazardous Waste.**

"Household Hazardous Waste" means any Hazardous Waste generated incidental to owning or maintaining a place of residence, excluding any Hazardous Waste generated in the course of operating a business concern at a residence pursuant to California Health and Safety Code Section 25218, *et seq.*

**A-54 H&S Code.**

"H&S Code" means the California Health and Safety Code.

**A-55 Indemnities.**

"Indemnities" means City, its officers, employees, contractors, agents and volunteers.

**A-56 Marborg Goleta Buyback Center.**

"Marborg Goleta Buyback Center" means the buy back center located at 20 David Love Place, Goleta, California 93117, or, in the event that Contractor ceases to operate the Marborg Goleta

Buyback Center at this location, Marborg Goleta Buyback Center shall mean any other location within the County that is operated by Contractor and at which the same or similar services are provided.

**A-57 Material Recovery Facility (MRF).**

“Materials Recovery Facility” or “MRF” means a permitted facility where Solid Waste, Recyclables, Green Waste, and other materials are processed, sorted or separated for the purposes of recovering reusable or Recyclables. For the purposes of this Agreement, the MRF is the Designated Transfer and Processing Facility.

**A-58 Maximum Rate.**

“Maximum Rate(s)” means the maximum monetary amounts, as adjusted pursuant to Section 12.2, that may be charged a Customer by Contractor for providing Collection services of Solid Waste, Source Separated Recyclables, Source Separated Green Waste and other services provided Residential Premises and Commercial Premises pursuant to Section 12.1 and as shown in Exhibit B.

**A-59 MFD Recyclables Collection Service.**

“MFD Recyclables Collection Service” means Collection of Source Separated Recyclables from MFD Customers in the Service Area and the delivery of the Recyclables to the Designated Transfer and Processing Facility.

**A-60 MFD Solid Waste Collection Service.**

“MFD Solid Waste Collection Service” means Collection of Solid Waste from MFD Customers in the Service Area and the delivery of the Solid Waste to the Designated Disposal Site.

**A-61 Mulch.**

“Mulch” means a material used for landscaping, soil amendment or erosion control that results from the mechanical breakdown (chipping and/or grinding) of materials, including, but not limited to, Green Waste, yard trimmings and wood byproducts.

**A-62 Multi-Family Dwelling (MFD).**

“Multi-Family Dwelling” or “MFD” means all dwelling units, whether detached or attached, of three or more units, including triplexes, fourplexes, apartments, condominiums, townhomes, mobile homes or motor homes located on a permanent site intended for or capable of being utilized for residential living other than a hotel or motel.

**A-63 Multi-Family Dwelling (MFD) Complex.**

“Multi-Family Dwelling Complex” or “MFD Complex” means Multi-Family Dwellings that have centralized Collection for all dwelling units in the complex and are billed to one address.

**A-64 Occupant.**

“Occupant” means a Person who occupies a Residential Premises or Commercial Premises.



**A-65 On-Call Service.**

“On-Call Service” means Collection service provided by Contractor that is scheduled no less than twenty-four (24) hours in advance. On-Call Service is initiated by a Customer contacting Contractor pursuant to Section 10.7. On-Call Services provided pursuant to Article 5 are not Unscheduled Services.

**A-66 Overloaded.**

“Overloaded” means the amount of Solid Waste or Source Separated Recyclables placed in or adjacent to a Bin that is in excess of the Bin capacity.

**A-67 Owner.**

“Owner” means the Person holding legal title to the real property constituting the Residential Premises or Commercial Premises.

**A-68 Party.**

“Party(ies)” means City and Contractor, individually or together.

**A-69 Permitted Set-Out Site.**

“Permitted Set-Out Site” means the Set-Out Site mutually agreeable to the Customer and Contractor when it is determined by Contractor that Curbside Cart Collection by an automated Collection vehicle is not possible for reasons including, but not limited to, irregularly designed streets, lack of suitable Curbside placement or streets with no place for an automated Collection vehicle to turn around at the end, or the Set-Out Site mutually agreeable to the Customer and Contractor for Bins, which shall not be within the public right-of-way.

**A-70 Person.**

“Person” means any individual, firm, agency, company, limited liability company, cooperative, association, organization, partnership, limited partnership, public or private corporation, consortium, trust, joint venture, commercial entity, regulatory authority, governmental entity, including the United States, the State, counties, towns, cities, or special purpose districts, or any other legal entity.

**A-71 Previous Contractor.**

“Previous Contractor” means Allied Waste Services of Santa Barbara, a division of Republic Services, Inc.

**A-72 Prior City Franchise Agreement with Allied Waste.**

“Prior City Franchise Agreement with Allied Waste” means the franchise agreement between City and the Previous Contractor as identified as such in the Recitals of this Agreement.

**A-73 Prior City Franchise Agreement with Marborg.**

“Prior City Franchise Agreement with Marborg” means the franchise agreement between City and Contractor as identified as such in the Recitals of this Agreement.

**A-74 RCRA.**

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, *et seq.*, as may be amended and related federal, State and local laws and regulations.

**A-75 Recyclables.**

“Recyclable(s)” means materials that are part of the Solid Waste stream which can be Recycled consistent with the requirements of the Act. As of the Effective Date, Recyclables includes the following items, as well as any additional materials that Contractor may request to add from time to time upon the written consent of City: newsprint (including inserts, coupons and store advertisements); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, brown bags and paper, paperboard, paper egg cartons, milk and juice cartons, office ledger paper, legal pad backing, shoeboxes and telephone books); glass containers (including brown, clear, blue and green glass bottles and jars); aluminum (including beverage containers and foil products); small scrap and cast aluminum (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); steel including “tin” cans, aerosol cans (empty, non-toxic products) and small scrap (not exceeding forty (40) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; all plastics (Types #1-7), except expanded Polystyrene (EPS); aseptic packaging; textiles; and Household Batteries.

**A-76 Recycle.**

“Recycle(d)(ing)” means the process of sorting, cleansing, treating and reconstituting of Recyclables, which would otherwise be Disposed of at a Disposal Site, for the purpose of returning the Recyclables to the economy in the form of raw materials for reused, remanufactured or reconstituted products.

**A-77 Residential or Residential Premises.**

“Residential” or “Residential Premises” means of, from, or pertaining to Single-Family Dwellings (SFD) and Multi-Family Dwellings (MFD), including single-family homes, apartments, condominiums, townhouse complexes, mobile home parks, cooperative apartments, MFD Complexes and other dwelling units where people reside.

**A-78 Roll-Off Box.**

“Roll-Off Box(es)” means a Container with a capacity from ten (10) to forty (40) cubic yards, which is typically pulled onto a roll-off vehicle used to transport Solid Waste. A Roll-Off Box may be open topped or enclosed with or without a compaction unit (compactor).

**A-79 Roll-Off Box Collection Service.**

“Roll-Off Box Collection Service” means Collection of Roll-Off Boxes from Commercial Customers in the Service Area.

**A-80 Scavenging.**

“Scavenging” means the unauthorized removal of Recyclables. Scavenging is prohibited by Public Resources Code § 41950.

**A-81 Service Area.**

“Service Area” means the jurisdictional boundaries of City.

**A-82 Services Initiation Date.**

“Services Initiation Date” means July 1, 2011.

**A-83 Set-Out Site.**

“Set-Out Site” means the location on a Residential Premises, Commercial Premises or City Facilities Premises where Carts, Bins or loose Solid Waste are placed for Collection. Set-Out Sites include Curbside and a Permitted Set-Out Site.

**A-84 SFD Green Waste Collection Service.**

“SFD Green Waste Collection Service” means Collection of Source Separated Green Waste from SFD Customers in the Service Area and the deliver of the Green Waste to the Designated Disposal Site.

**A-85 SFD Recyclables Collection Service.**

“SFD Recyclables Collection Service” means Collection of Source Separated Recyclables from SFD Customers in the Service Area and the delivery of the Recyclables to the Designated Transfer and Processing Facility.

**A-86 SFD Solid Waste Collection Service.**

“SFD Solid Waste Collection Service” means Collection of Solid Waste from SFD Customers in the Service Area and the delivery of the Solid Waste to the Designated Disposal Site or Contractor’s Facilities.

**A-87 Sharps Waste.**

“Sharps Waste” means any item generated at a Residential Premises having corners, edges, or projections capable of cutting or piercing the skin to deliver injections or for medical purposes, including, but not limited to, needles (hoypodermic, pen or intravenous), needles with syringes, needles with attached tubing and lancets.

**A-88 Similar Service.**

“Similar Service” means the Solid Waste Handling Services provided in the County’s Franchise Area #2 of similar type of service, Container capacity and frequency of Collection. Similar Service for Residential Customers shall refer to an automated Cart system utilizing one Cart for Solid Waste, one Cart for Recyclables and one Cart for Green Waste in which Solid Waste and Green Waste are Collected weekly, and Recyclables are Collected every other week. Similar

service for Commercial Customers shall refer to Solid Waste or Recyclables Collected using Bins in which Solid Waste and Recyclables are Collected every week.

**A-89 Single-Family Dwelling (SFD).**

“Single-Family Dwelling” or “SFD” means all dwelling units, whether detached or attached, of no more than two units, including homes, duplexes, condominiums and townhomes.

**A-90 Solid Waste.**

“Solid Waste” means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, dewatered, treated, or chemically fixed sewage sludge which is not Hazardous Waste, manure, and vegetable or animal solid and semisolid wastes, but does not include abandoned vehicles, Hazardous Waste, or Construction and Demolition Debris. “Solid Waste” may include Recyclables, Green Waste, and Bulky Items if such materials are not source separated from the Solid Waste at the site of generation or Collected for Recycling, Composting or processing.

**A-91 Solid Waste Handling Service.**

“Solid Waste Handling Service(s)” means the Collection, transportation, storage, transfer, disposition or processing of Solid Waste.

**A-92 Solid Waste and Environmental Services Program Fee.**

“Solid Waste and Environmental Services Program Fee” means and consists of eight percent (8%) out of the thirteen percent (13%) Franchisee Monthly Fees.

**A-93 Source Separated.**

“Source Separated” means materials which otherwise would become Solid Waste, but have been segregated by the Generator, such as Recyclables or Green Waste, for the purpose of Solid Waste, Recycling, or composting, to be Collected by Contractor or others.

**A-94 State.**

“State” means the State of California.

**A-95 Term.**

“Term” means the Term of this Agreement as set forth in Section 4.4.

**A-96 Ton.**

“Ton” or “Tonnage” means a unit of measure for weight equivalent to two-thousand (2,000) pounds where each pound contains sixteen (16) ounces.

**A-97 Total Billings.**

“Total Billings” means Billings for any and all monies, compensation, fees, charges, consideration, and revenue submitted to Customers for payment to Contractor, its Affiliates,

subsidiaries, parents and any Person or entity in which Contractor has a financial interest, in connection with, arising from, or in any way attributable to the Solid Waste Handling Services carried out by or on behalf of Contractor under this Agreement, in accordance with generally accepted accounting principles. Total Billings includes, without limitation, the Maximum Rates according to Article 12 and as set forth in Exhibit B and/or Customer Rates paid by Customers, without subtracting Franchisee Monthly Fees or any fees or payments imposed on Contractor pursuant to this Agreement.

**A-98 Toxic Substance Control Act.**

“Toxic Substance Control Act” means the federal Toxic Substance Control Act, 15 U.S.C. Sections 2601, *et seq.*, as may be amended and related federal, State and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Sections 25300, *et seq.*, as may be amended.

**A-99 Transfer and Processing Facility.**

“Transfer and Processing Facility” means a facility primarily used for the purpose of Recycling and transferring Solid Waste from Collection vehicles to transfer vehicles to more efficiently transport Solid Waste to a Disposal Site.

**A-100 Transition Period.**

“Transition Period” means the period as identified in Section 5.2 during which Contractor shall transition the provision of Solid Waste Handling Services by the Previous Contractor for a portion of the Service Area to Solid Waste Handling Services provided by Contractor for the entire Service Area under this Agreement.

**A-101 Transition Plan.**

“Transition Plan” means Contractor’s written transition plan as identified in and required to be submitted to City pursuant to Section 5.2 for the transition of the provision of Solid Waste Handling Services by the Previous Contractor for a portion of the Service Area to Solid Waste Handling Services provided by Contractor for the entire Service Area under this Agreement.

**A-102 Universal Waste (U-Waste).**

“Universal Waste” or “U-Waste” means all wastes defined by Title 22 of the California Code of Regulations Sections 66273.1, *et seq.*, including, but not limited to, Household Batteries, fluorescent light bulbs, mercury switches and E-Waste.

**A-103 Unscheduled Service.**

“Unscheduled Service” means services that are unscheduled or provided on an intermittent, less than monthly basis. Unscheduled Service does not include Collection services provided under this Agreement, including the services identified in Article 5 at the Maximum Rates according to Article 12 and/or Customer Rates.

**A-104 White Goods.**

“White Goods” means major appliances, including, but not limited to, washing machines, clothes dryer, hot water heaters, dehumidifiers, conventional ovens, microwave ovens, stoves, refrigerators, freezers, air-conditioners, trash compactors and residential furnaces.

**EXHIBIT B**  
**MAXIMUM RATE SCHEDULES**

**Schedule 1  
Residential Services  
Single-Family Dwellings**

<b>Cart Services</b>						
<b>Service Description</b>	<b>Monthly Rate</b>					
32 gallon solid waste cart (weekly collection)	\$23.00					
64 gallon solid waste cart (weekly collection)	\$25.75					
96 gallon solid waste cart (weekly collection)	\$29.75					
96 gallon recyclable cart (bi-weekly collection)	No Charge					
96 gallon green waste cart (weekly collection)	No Charge					
Each additional 32, 64 or 96 gallon solid waste cart	\$6.00					
Each additional 96 gallon recyclable cart (32 or 64 gallon upon request)	No Charge					
Each additional 96 gallon green waste cart (32 or 64 gallon upon request)	No Charge					
<b>Additional Cart Services</b>						
<b>Service Description</b>	<b>Rate</b>					
Backyard cart service for eligible customers	No Charge					
Backyard cart service for ineligible customers (each cart)	\$6.00 /month					
Go-back service (each occurrence)	\$10.00					
<b>Bin Services</b>						
<b>Service Description</b>	<b>Monthly Rate</b>					
	<b>Number Of Collections Per Week</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
1.5 cubic yard solid waste bin*	\$101.53	\$180.39	\$259.25	\$338.11	\$416.97	\$495.83
2 cubic yard solid waste bin*	\$132.08	\$237.23	\$342.37	\$447.52	\$552.67	\$657.81
3 cubic yard solid waste bin*	\$187.49	\$345.21	\$502.93	\$660.65	\$818.37	\$976.09
4 cubic yard solid waste bin*	\$244.31	\$454.61	\$664.90	\$875.19	\$1,085.48	\$1,295.78
* Any SFD solid waste bin service includes recyclables and green waste cart services above.						
<b>Service Description</b>	<b>Rate</b>					
Additional bin collection:						
1.5 cubic yard solid waste bin	\$33.84 /collection					
2 cubic yard solid waste bin	\$44.03 /collection					
3 cubic yard solid waste bin	\$62.50 /collection					
4 cubic yard solid waste bin	\$81.44 /collection					
<b>Additional Bin Services</b>						
<b>Service Description</b>	<b>Rate</b>					
Padlock rental	\$13.00 /month					
Padlock installation (each bin)	\$35.00					
Bar lock installation (each bin)	\$80.00					
Overloaded bin collection (each bin)	\$15.00					
<b>- continued on following page -</b>						



<b>Additional Bin Services (cont.)</b>	
<b>Service Description</b>	<b>Rate</b>
Steam clean bin:	
1x per fiscal year (each bin)	No Charge
2x or more per fiscal year (each bin)	\$42.00
<b>Additional SFD Collection Services</b>	
<b>Service Description</b>	<b>Rate</b>
Bulky item collection (2x /fiscal year)	No Charge
E-Waste and white goods collection	No Charge
Holiday (Christmas) tree collection	No Charge
Household battery collection	No Charge
Sharps waste collection	No Charge
Access to Marborg Goleta Buy Back Center	No Charge

**Schedule 2  
Residential Services  
Multi-Family Dwellings**

<b>Cart Services</b>						
<b>Service Description</b>	<b>Monthly Rate</b>					
32 gallon solid waste cart (weekly collection)	\$19.50					
64 gallon solid waste cart (weekly collection)	\$21.75					
96 gallon solid waste cart (weekly collection)	\$25.25					
96 gallon recyclable cart (bi-weekly collection)	No Charge					
Each additional 32, 64 or 96 gallon solid waste cart	\$6.00					
Each additional 96 gallon recyclable cart (32 or 64 gallon upon request)	No Charge					
<b>Additional Cart Services</b>						
<b>Service Description</b>	<b>Rate</b>					
Go-back service (each occurrence)	\$10.00					
<b>Bin Services</b>						
<b>Service Description</b>	<b>Monthly Rate</b>					
	<b>Number Of Collections Per Week</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
1.5 cubic yard solid waste bin*	\$101.53	\$180.39	\$259.25	\$338.11	\$416.97	\$495.83
2 cubic yard solid waste bin*	\$132.08	\$237.23	\$342.37	\$447.52	\$552.67	\$657.81
3 cubic yard solid waste bin*	\$187.49	\$345.21	\$502.93	\$660.65	\$818.37	\$976.09
4 cubic yard solid waste bin*	\$244.31	\$454.61	\$664.90	\$875.19	\$1,085.48	\$1,295.78
1.5 cubic yard recyclables bin	\$68.34	\$115.02	\$161.69	\$208.36	\$255.04	\$301.71
2 cubic yard recyclables bin	\$87.97	\$150.20	\$212.44	\$274.67	\$336.90	\$399.13
3 cubic yard recyclables bin	\$121.80	\$215.14	\$308.49	\$401.84	\$495.19	\$588.54
4 cubic yard recyclables bin	\$156.97	\$281.44	\$405.90	\$530.37	\$654.83	\$779.30
* Any solid waste bin service includes 30% of the solid waste bin capacity for recyclables at no additional charge. Contractor to determine capacity of recyclables container to be provided.						
<b>Service Description</b>	<b>Rate</b>					
Additional bin collection:						
1.5 cubic yard solid waste or recyclables bin	\$33.84 /collection					
2 cubic yard solid waste or recyclables bin	\$44.03 /collection					
3 cubic yard solid waste or recyclables bin	\$62.50 /collection					
4 cubic yard solid waste or recyclables bin	\$81.44 /collection					
<b>Additional Bin Services</b>						
<b>Service Description</b>	<b>Rate</b>					
Padlock rental	\$13.00 /month					
Padlock installation (each bin)	\$35.00					
Bar lock installation (each bin)	\$80.00					
Overloaded bin collection (each bin)	\$15.00					
<b>- continued on following page -</b>						

<b>Additional Bin Services (cont.)</b>	
<b>Service Description</b>	<b>Rate</b>
Steam clean bin:	
1x per fiscal year (each bin)	No Charge
2x or more per fiscal year (each bin)	\$42.00
<b>Additional MFD Collection Services</b>	
<b>Service Description</b>	<b>Rate</b>
Bulky item collection (2x /fiscal year)	No Charge
E-Waste and white goods collection	No Charge
Holiday (Christmas) tree collection	No Charge
Household battery collection	No Charge
Sharps waste collection	No Charge
Access to Marborg Goleta Buy Back Center	No Charge

**Schedule 3  
Commercial Services**

<b>Cart Services</b>						
<b>Service Description</b>	<b>Monthly Rate</b>					
32 gallon solid waste cart (weekly collection)	\$25.00					
64 gallon solid waste cart (weekly collection)	\$29.00					
96 gallon solid waste cart (weekly collection)	\$34.00					
96 gallon recyclables cart (weekly collection)	\$13.50					
Each additional 32, 64 or 96 gallon solid waste cart	\$7.00					
Each additional 96 gallon recyclables cart (32 or 64 gallon upon request)	No Charge					
<b>Additional Cart Services</b>						
<b>Service Description</b>	<b>Rate</b>					
Padlock rental	\$13.00 /month					
Padlock installation (each cart)	\$27.00					
Go-back service (each occurrence)	\$10.00					
<b>Bin Services</b>						
<b>Service Description</b>	<b>Monthly Rate</b>					
	<b>Number Of Collections Per Week</b>					
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
1.5 cubic yard solid waste bin	\$101.53	\$180.39	\$259.25	\$338.11	\$416.97	\$495.83
2 cubic yard solid waste bin	\$132.08	\$237.23	\$342.37	\$447.52	\$552.67	\$657.81
3 cubic yard solid waste bin	\$187.49	\$345.21	\$502.93	\$660.65	\$818.37	\$976.09
4 cubic yard solid waste bin	\$244.31	\$454.61	\$664.90	\$875.19	\$1,085.48	\$1,295.78
1.5 cubic yard recyclables bin	\$68.34	\$115.02	\$161.69	\$208.36	\$255.04	\$301.71
2 cubic yard recyclables bin	\$87.97	\$150.20	\$212.44	\$274.67	\$336.90	\$399.13
3 cubic yard recyclables bin	\$121.80	\$215.14	\$308.49	\$401.84	\$495.19	\$588.54
4 cubic yard recyclables bin	\$156.97	\$281.44	\$405.90	\$530.37	\$654.83	\$779.30
<b>Service Description</b>	<b>Rate</b>					
Additional bin collection:						
1.5 cubic yard solid waste or recyclables bin	\$33.84					
2 cubic yard solid waste or recyclables bin	\$44.03					
3 cubic yard solid waste or recyclables bin	\$62.50					
4 cubic yard solid waste or recyclables bin	\$81.44					
<b>Additional Bin Services</b>						
<b>Service Description</b>	<b>Rate</b>					
Padlock rental	\$13.00 /month					
Padlock installation (each bin)	\$35.00					
Bar lock installation (each bin)	\$80.00					
Overloaded bin collection (each bin)	\$15.00					
<b>- continued on following page -</b>						

<b>Additional Bin Services (cont.)</b>	
<b>Service Description</b>	<b>Rate</b>
On-call bin collection:	
1.5 cubic yard recyclables bin	\$50.77
2 cubic yard recyclables bin	\$66.04
3 cubic yard recyclables bin	\$93.75
4 cubic yard recyclables bin	\$122.16
Steam clean bin:	
1x per fiscal year (each bin)	No Charge
2x or more per fiscal year (each bin)	\$42.00
<b>Roll-Off Services</b>	
<b>Service Description</b>	<b>Rate</b>
Roll-off box rental (11, 18, 25 or 40 cubic yard)	\$3.55 /day
Disposal (compacted and non-compacted)	\$69.50 /ton
Non-compacted collection to designated transfer and processing facility or Contractor's facilities (all roll-off boxes)	\$135.00 /collection
Non-compacted collection to designated disposal site (all roll-off boxes)	\$178.63 /collection
Compacted collection	\$220.88 /collection
<b>Additional Roll-Off Services</b>	
<b>Service Description</b>	<b>Rate</b>
Steam clean compactor:	
1x per year (each compactor)	No Charge
2x or more per year (each compactor)	\$90.00

**EXHIBIT C**  
**ADMINISTRATIVE CHARGES**

### Administrative Charges

<b>Administrative Charge Description</b>	<b>Amount</b>
Restart Service Charge	\$20.00
Delinquency Charge	\$5.00 /30 days
Return Check Charge	\$15.00

**EXHIBIT D**  
**CITY FACILITIES PREMISES**



<b>Public Facilities</b>				
<b>Facility</b>	<b>Location</b>	<b>Service</b>	<b>Quantity</b>	<b>Weekly Service</b>
City Hall	130 Cremona Drive, Suite B	4 cubic yard solid waste bin	One (1)	3x /week
		4 cubic yard recyclables bin	One (1)	2x /week
Public Works Corporate Yard	6735 Hollister Avenue	4 cubic yard solid waste bin	One (1)	1x /week
		4 cubic yard recyclables bin	One (1)	1x /week
Goleta Valley Community Center	5679 Hollister Avenue	4 cubic yard solid waste bin	Two (2)	3x / week
		4 cubic yard recyclables bin	One (1)	2x /week
Goleta Community Library	500 N. Fairview Avenue	32 gallon solid waste cart	Eight (8)	2x /week
		96 gallon recyclables cart	Three (3)	Every other week
Stow House, Railroad Museum	304 N. Los Carneros Road	3 cubic yard solid waste bin	One (1)	1x /week
		4 cubic yard recyclables bin	One (1)	1x /week
		40 cubic yard roll-off box	One (1)	2x /week
Stow Grove Park	580 N. La Patera Lane	3 cubic yard solid waste bin	Two (2)	2x /week
		3 cubic yard green waste bin	One (1)	1x /week
		32 gallon recyclables cart	Seventeen (17)	Every other week
<b>Parks &amp; Open Spaces</b>				
<b>Park/Open Space</b>	<b>Location</b>	<b>Service</b>	<b>Quantity</b>	<b>Weekly Service</b>
Andamar	To be specified by City, generally located between 5600 block of Cathedral Oaks Road, 600 block of Dara Drive and 600 block of Andamar Way	32 gallon solid waste cart	One (1)	1x /week
Armitos Park	To be specified by City, generally located at east end of Armitos Avenue at the San Jose Creek	32 gallon solid waste cart	Three (3)	1x /week
Armstrong	To be specified by City, generally located between the 7200 block of Hollister Avenue, Pacific Oaks Road and end of 7200 block of Armstrong Road	32 gallon solid waste cart	One (1)	1x /week
Bella Vista I/II	To be specified by City, generally located between the 7300 block of Cathedral Oaks Road, 200 block of Pacer Drive and 100 block of Placer Drive	32 gallon solid waste cart	One (1)	1x /week
Brandon	To be specified by City, generally Calle Real to Brandon Drive	0	0	
Campus Glen	To be specified by City, generally located between 7400 block of Hollister Avenue, Coronado Drive,	0	0	

	7600 block of Newport Drive and 7500 block of Palos Verdes Drive			
Covington Walkway	To be specified by City, generally located between 6400 block of Cathedral Oaks Road	32 gallon solid waste cart	One (1)	1x /week
Emerald Terrace Tennis Courts	To be specified by City, generally located between 5700 block of Cathedral Oaks Road and 600, 470 and 454 blocks of Arundel Road	32 gallon solid waste cart	Three (3)	1x /week
Evergreen Acres	To be specified by City, generally located between Calle Real, 100 block of Brandon Drive and 7500 block of Evergreen Drive	32 gallon solid waste cart	Three (3)	1x /week
Girsh Park	To be specified by City, generally located at 7050 Phelps Road	4 cubic yard solid waste bin	Two (2)	6x /week
		64 gallon recyclables cart	Four (4)	1x /week
Koarts Apartments	To be specified by City, generally located between Calle Real and the end of the 200 block of Brandon Drive	0	0	
Koarts Teardrop	To be specified by City, generally located between 7500 block of Calle Real, San Roassano Drive and 100 block of San Milano Drive	0	0	
La Goleta	To be specified by City, generally located between 5900 block of Cathedral Oaks Road, 800 block of Fairview Avenue, 6000 block of La Goleta Road, 6000 block of Paseo Palmilla and 6000 block of Manzanilla Drive	32 gallon solid waste cart	One (1)	1x /week
Lake Los Carneros	To be specified by City, generally located between Los Carneros Road, Covington Way, La Patera Lane and Calle Real	32 gallon solid waste cart	Five (5)	1x /week
Mathilda	To be specified by City, generally located at 311 Mathilda Drive	32 gallon solid waste cart	Four (4)	1x /week
Nectarine	To be specified by City, generally located between 5800 block of Hollister Avenue and 100 block of Nectarine Avenue	32 gallon solid waste cart	One (1)	1x /week
Oro Verde	To be specified by City, generally located between 5500 block of Cathedral Oaks Road, 700 block of Cambridge Drive and 5500 block of Via Salerno	0	0	
St. Charles Place	To be specified by City, generally located between 7600 block of Calle	0	0	

	Real and St. Charles Place			
San Miguel	To be specified by City, generally located between 7700 block of Calle Real, 7900 Winchester Canyon Road, Winchester Drive, 7900 block of Rio Vista Drive and end of Rio Vista Drive	32 gallon solid waste cart	One (1)	1x /week
Santa Barbara Shores	To be specified by City, generally located between 7500 block of Hollister Avenue and 200 and 300 blocks of Santa Barbara Shores Drive	32 gallon solid waste cart	One (1)	1x /week
Ellwood Mesa	To be specified by City, generally located between 7700 block of Hollister Avenue to the ocean	32 gallon solid waste cart	Four (4)	1x /week
Stonebridge	To be specified by City, generally located between 6200 block of Cathedral Oaks Road and trail connection to Stow Canyon Road	32 gallon solid waste cart	One (1)	1x /week
Stow House	To be specified by City, generally located between 6500 Cathedral Oaks Road and 300 Los Carneros Road	32 gallon solid waste cart	Four (4)	1x /week
Stow Tennis Courts	To be specified by City, generally located between 5900 block of Cathedral Oaks Road, 400 block of Fairview Avenue and 6000 and 6200 blocks of Stow Canyon Road	32 gallon solid waste cart	Three (3)	1x /week
		32 gallon recyclables cart	One (1)	1x /week
University Village	To be specified by City, generally located between 7200 block of Hollister Avenue and Pacific Oaks Road	32 gallon solid waste cart	Two (2)	1x /week
Winchester I	To be specified by City, generally located between 7500 and 7600 blocks of Calle Real	32 gallon solid waste cart	One (1)	1x /week
Winchester II	To be specified by City, generally located at 700 block of Calle Real	32 gallon solid waste cart	One (1)	1x /week

**BUS SHELTER & PUBLIC RECEPTACLES**

Location/address	Type	Number of containers	Collection
5300 Hollister (Patterson & Hollister)	MTD	1	3X /week
5301 Hollister – Cottage Hospital (Hollister & Patterson)	MTD	2	3X /week
5400 Block Hollister (Sumida Gardens)	MTD	1	3X /week
5444 Hollister – St. Raphael's	MTD	1	3X /week
5600 block Hollister – Toyota of SB (Hollister & Kellogg)	MTD	2	3X /week
5610 Hollister – Carpeteria (Hollister & Kellogg)	MTD	1	3X /week

5679 Hollister – Goleta Community Center	MTD	2	3X /week
5680 Hollister – Freedom Motors (Hollister & Kinman)	City	1	3X /week
5720 Hollister – Goleta Motors	MTD	1	3X /week
5724 Hollister – Wendy’s	City	1	3X /week
5754 Hollister – Krage Autoparts	City	1	3X /week
5729 Hollister – International Travel	City	1	3X /week
5757 Hollister – Santa Cruz Market	City	1	3X /week
5772 Hollister (Hollister & Tecolote)	City	1	3X /week
5786 Hollister – Master Care Ultra Clean	City	1	3X /week
5792 Hollister – Goleta Jewelers	City	1	3X /week
5799 Hollister – Old Town Antiques (Hollister & Pine)	MTD	3	3X /week
5810 Hollister – 7/11 (Hollister & Nectarine)	MTD	2	3X /week
5827 Hollister – Community West Bank	City	1	3X /week
5855 Hollister – Larry’s Auto Parts	City	1	3X /week
5880 Hollister – Gills Fire Places	City	1	3X /week
5881 Hollister – Velo Pro Bikes	City	1	3X /week
5918 Hollister – Pattaya Bar & Grill	City	1	3X /week
6434 Hollister – Willow Springs	MTD	1	3X /week
6735 Hollister (Hollister & Coromar)	MTD	2	3X /week
6800 block Hollister (Hollister & Storke)	MTD	1	3X /week
6875 Hollister – Jack In The Box	MTD	2	3X /week
6900 Block Hollister – Camino Real Market Place	MTD	1	3X /week
7200 Block Hollister (Hollister & Canon Green)	MTD	3	3X /week
7400 Hollister (Hollister & Ellwood Station)	MTD	2	3X /week
7433 Hollister – 7/11 (Hollister & Entrance)	MTD	2	3X /week
7500 Block Hollister (Hollister & Palo Alto)	MTD	1	3X /week
7600 Block Hollister – Santa Barbara Shores	MTD	1	3X /week
7686 Hollister – Ellwood School	MTD	1	3X /week
5600 Calle Real (Calle Real & N. Kellogg)	MTD	1	3X /week
Calle Real & Encina	MTD	1	3X /week
195 N. Fairview – Wells Fargo	MTD	1	3X /week
400 S. Fairview – Airport Plaza	MTD	1	3X /week
200 Block Storke – Camino Real Marketplace	MTD	1	3X /week
270 Storke – Rusty’s Pizza	MTD	1	3X /week
400 Block Storke (Storke & Phelps)	MTD	2	3X /week
500 Block Storke (Storke & Whitier)	MTD	1	3X /week
Santa Felicia at The Plaza	MTD	1	3X /week
Winchester Canyon & Bradford	MTD	1	3X /week
5800 Cathedral Oaks – Cathedral Oaks Athletic Club	MTD	1	3X /week

**EXHIBIT E**  
**CITY SPONSORED EVENTS**

<b>City-Sponsored Event</b>	<b>Approximate Date</b>
Fiesta Ranchera	June-July
Goleta Lemon Festival	October
Independence Day – Girsh Park	July 4
Independence Day – Stow House	July 4

**EXHIBIT F**  
**PORTABLE TOILET LOCATIONS**

### Portable Toilet Locations

<b>Facility</b>	<b>Location</b>
Stow Grove Park	To be specified by City, generally located at 580 N. La Patera Lane
Lake Los Carneros	To be specified by City, generally located between Los Carneros Road, Covington Way, La Patera Lane and Calle Real
Stow House, Railroad Museum	To be specified by City, generally located in parking lot at 304 N. Los Carneros Road
Evergreen Acres	To be specified by City, generally located between Calle Real, 100 block of Brandon Drive and 7500 block of Evergreen Drive
Ellwood Mesa	To be specified by City, generally located in parking lot between 7700 block of Hollister Avenue to the ocean
Santa Barbara Shores	To be specified by City, generally located in parking lot between 7500 block of Hollister Avenue and 200 and 300 blocks of Santa Barbara Shores Drive



**EXHIBIT G**  
**RATE ADJUSTMENT EXAMPLE**

### RATE ADJUSTMENT EXAMPLE

**Table 1 – Calculation of Service Component**

CPI – February 2009	221.4
CPI – February 2010	224.6
<b>Service Component Adjustment Factor</b>	<b>= (224.6–221.4) / 221.4 X 100 = 1.4%</b>

**Table 2 – Calculation of Disposal Component**

2009 Disposal Fee – 12-month average (1/1/09 – 12/31/09)	\$72.00
2010 Disposal Fee – 12-month average (1/1/10 – 12/31/10)	\$79.20
<b>Disposal Component Adjustment Factor</b>	<b>= (79.20–72) / 72 X 100 = 10.0%</b>

**Table 3 – Calculation of Rate Adjustment %**

Rate Component	Relative Weight	Adjustment Factor	Weighted Adjustment Percentage
Service	67%	1.4%	<b>0.94%</b>
Disposal	33%	10.0%	<b>3.30%</b>
<b>Rate Adjustment Percent</b>			<b>4.24%</b>

**EXHIBIT H**  
**FRANCHISEE MONTHLY FEES FORM**



**FRANCHISEE MONTHLY FEES PAYMENT FORM**

**FRANCHISEE NAME:** \_\_\_\_\_

Total Billings for the Month of _____	\$ _____
Less Refunds to Customers _____	\$ _____
Gross Billing	\$ _____
Net Billing (Gross Billing/113%)	\$ _____
5% Franchise Fee (5% x Net Billing)	\$ _____
8% Solid Waste & Environmental Services Program Fee (8% x Net Billing)	\$ _____
10% Penalty (If not postmarked by the 15 <sup>th</sup> of the month)	\$ _____
<b>Total Fees and Penalty</b>	<b>\$ _____</b>

The undersigned affirms to be authorized and qualified to act on behalf of franchisee, has prepared this report from official accounting records, and will maintain the source documents and related permanent financial records, subject to audit, at the following address:

Authorized Signature \_\_\_\_\_  
Print Name \_\_\_\_\_

\_\_\_\_\_ **Date**

Please mail this report and submit fees to:  
City of Goleta: Finance Department  
130 Cremona Drive, Suite B  
Goleta, CA 93117  
(805) 961-7500

1 **Tajiguas Resource Recovery Project**  
2 **Materials Delivery Commitment &**  
3 **Processing Services**  
4 **Agreement**  
5 **BETWEEN**  
6 **County of Santa Barbara**  
7 **AND**  
8 **City of Goleta**

9 **Agreement Date:**  
10 November 17, 2016 – Final

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53 **ATTACHMENTS**

54 1. Projected and Minimum Annual Delivery Requirement



**55 RECITALS**

56 This Material Processing Services and Delivery Commitment Agreement is made and dated as of the date  
57 on the cover page between the County of Santa Barbara, a political subdivision of the State of California  
58 (the "County"), and the City of Goleta, a general law city and political subdivision of the State of California  
59 (the "City").

60 (A) WHEREAS, the Parties are responsible for the health and safety of the citizens within their  
61 geographic boundaries; and,

62 (B) WHEREAS, the Parties regulate Municipal Solid Waste, Recyclable Materials, and Organic  
63 Materials collection in areas under their jurisdiction and award franchises for collection to private  
64 organization(s), herein called "Collection Contractor(s)"; and,

65 (C) WHEREAS, the Parties find it in their mutual economic interest to address solid waste and  
66 recycling issues on a regional level; and,

67 (D) WHEREAS, the California Integrated Waste Management Act (CIWMA) (California Public  
68 Resources Code, §40000 et seq.) required that the Parties reduce by fifty percent (50%) the  
69 amount of Solid Waste they landfill by the end of the Year 2000 and continue to maintain that  
70 reduction going forward; and,

71 (E) WHEREAS, subsequent legislation including Assembly Bills (AB) 32, 341 and 1826 require reduced  
72 air emissions and increased diversion of commercial and multi-family Recyclable Materials and  
73 Organic Materials to achieve a 75% diversion goal by 2020; and,

74 (F) WHEREAS, each Party has the authority to regulate its solid waste, Recyclable Materials, and  
75 Organic Materials stream, including the collection, transfer, transportation, and Processing  
76 thereof, and has the authority to establish rates for the conduct of such functions; and,

77 (G) WHEREAS, solid waste from each Party is disposed at the Tajiguas Sanitary Landfill located off  
78 State Highway 101, approximately twenty six (26) miles West of Santa Barbara; and,

79 (H) WHEREAS, the Parties developed the Tajiguas Resource Recovery Project ("TRRP") in order to  
80 achieve their goals of: extending the operating life of Tajiguas Landfill; and complying with State  
81 law and local policy that mandate diverting materials from Disposal, and reducing greenhouse gas  
82 emissions; and,

83 (I) WHEREAS, the Parties have found that these goals are in the public interest, and,

84 (J) WHEREAS, County has determined that the execution of this Agreement will serve the public  
85 health, safety and welfare by providing a more stable, predictable and reliable supply of Municipal  
86 Solid Waste and the resulting service payment revenue, thereby enabling County to plan, manage,  
87 operate and finance the Tajiguas Resource Recovery Project and extend the life of the Tajiguas  
88 Landfill; and,

89 (k) WHEREAS, this is a necessary financing agreement needed to secure the Certificates used to  
90 finance the TRRP;

91 IT IS THEREFORE AGREED AS FOLLOWS:

92 **ARTICLE 1: DEFINITIONS**

93 “Acceptable Materials”, means all of the materials delivered to the Facilities by the Collection  
94 Contractor(s), Public Participants, (or on behalf of Public Participants), and Other Users as permitted under  
95 Applicable Law and the Facilities’ Permits, including Mixed Waste, Source-Separated Organic Materials  
96 and Source-Separated Recyclable Materials. Acceptable Materials may include some Unacceptable  
97 Materials that must be removed by the Service Contractor before Processing or Disposal.

98 “Acceptable Materials Charge; AMC”, means the charge established pursuant to Section 4.3.A of this  
99 Agreement.

100 “Agreement”, means this Agreement, including all exhibits and attachments, as it may be amended.

101 “Agreement Services”, means all of County’s performance obligations under this Agreement to City under  
102 Article 3; and all of City’s performance obligations to County under Article 4.

103 “Agreement Term”, means the period of time between the Effective Date and the termination date, as  
104 set forth in Sections 2.1 and 2.2, during which this Agreement shall be effective.

105 “Agreement Year”, means the fiscal year, July 1 through June 30.

106 “Anaerobic Digestion Facility”; “AD Facility”, means the facility as described in Service Contractor’s  
107 Proposal and in subsequent documentation, which shall be operated by Service Contractor for Organic  
108 Materials Processing to produce digestate, biogas for electricity generation and Compost.

109 “Annual Budget”; means a budget that will contain an estimate of the Current Revenues and System Costs  
110 payable from Current Revenues for the ensuing Agreement Year (beginning on the upcoming July 1). The  
111 Annual Budget will also contain an estimate of the amount of Acceptable Materials expected to be  
112 delivered to the System in such Agreement Year and the resulting Acceptable Materials Charge required  
113 to be imposed in order for the County to meet the Rate Covenant.

114 “Applicable Law”, means any law, rule, code, standard, regulation, requirement, consent decree, consent  
115 order, consent agreement, Permit, guideline, action, determination or order of, or legal entitlement  
116 issued or deemed to be issued by, any governmental body having jurisdiction, applicable from time to  
117 time to any activities associated with the siting, design, construction, equipping, financing, ownership,  
118 start-up testing, acceptance, operation, maintenance, repair and replacement of any part of the Project,  
119 the transfer, handling, transportation, Marketing, Disposal or Processing of products and residuals, and  
120 any other obligations of the Parties under this Agreement. Governmental bodies include local, County,  
121 State and federal agencies and all successors thereto.

122 “Assignment”, means but is not limited to:

123 (A) A transfer to a third party of at least twenty-five percent (25%) of either Party’s assets dedicated  
124 to service under this Agreement; and,

125 (B) A sale, exchange or other transfer to a third party, which may result in a change of control of City  
126 or County; and,

## Material Delivery Commitment and Processing Services Agreement

- 127 (C) Any dissolution, reorganization, consolidation, merger, recapitalization, stock issuance or re-  
128 issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction  
129 in which either Party are a party and which results in a change of control of either Party; and,
- 130 (D) Any assignment by operation of law, including insolvency or bankruptcy, assignment for the  
131 benefit of creditors, writ of attachment for an execution being levied against this Agreement,  
132 appointment of a receiver taking possession of either Party's property; and,
- 133 (E) Any combination of the foregoing (whether or not in related or contemporaneous transactions),  
134 which has the effect of any such transfer or change of control of either Party.
- 135 "Bond Documents", means the Trust Agreement, 2017 Installment Purchase Agreement, Assignment  
136 Agreement, and all other legal documents necessary to effectuate the issuance of Certificates.
- 137 "Bond Holders Rate Stabilization Fund", means the account established pursuant to the Bond Documents.  
138 On the date of issuance of the Certificates, the County shall make a cash contribution in the amount of  
139 five million dollars (\$5,000,000), and deposit such sum in the Bond Holders Rate Stabilization Fund. If  
140 funds are used due to financial shortfalls (either higher than projected costs or lower than projected  
141 revenues) related to the Facility, the Fund will be replenished with Current Revenues from all of the  
142 participating jurisdictions based on the tons of material delivered to the Facility. If funds are used due to  
143 costs not related to the TRRP but rather related to non-TRRP costs, the Fund will be replenished with  
144 Current Revenues from the County
- 145 "Business Day", means any day that County Administrative Offices are open to the public to conduct  
146 business. In relation to the Certificates and the County's obligations under the Bond Documents, this  
147 definition is extended to mean any day on which the Trustee is open for corporate trust business at its  
148 Corporate Trust Office and on which the Federal Reserve System is open for business.
- 149 "Bypassed Waste", means any material that is weighed in at the County scale house for acceptance to the  
150 Project Site which could not be Processed at the Facilities prior to Disposal. Examples of Bypassed Waste  
151 could be Unacceptable Waste, waste not Processable due to size, high negative value for Processing, or  
152 unmarketable material. Bypassed Waste includes materials diverted from the Project before or after  
153 unloading but not Processed at the Project Site.
- 154 "Cap Value", means the threshold value of \$3,500,000 in the Jurisdictional Rate Stabilization Fund.
- 155 "Certificates", means all Solid Waste System Revenue Certificates of Participation (including Additional  
156 Certificates) payable from the Net Revenues of the County's Solid Waste Enterprise System. The County  
157 shall issue Solid Waste System Revenue Certificates of Participation, Series 2017 to fund the TRRP.
- 158 "Certificates Issuance Date" means the date on which the Solid Waste System Revenue Certificates of  
159 Participation, Series 2017 are executed and delivered.
- 160 "Change in Law", means any of the following acts, events, or circumstances, with which the Parties must  
161 comply notwithstanding the cost of such compliance, to the extent that compliance therewith materially  
162 increases or decreases the cost of performing a Party's obligations under this Agreement when such  
163 changes exceed fifty thousand dollars (\$50,000) in the aggregate in any one Agreement Year subject to  
164 adjustment using the applicable Adjustment Factor.

Material Delivery Commitment and Processing Services Agreement

165 (A) The adoption, amendment, promulgation, issuance, modification, repeal or written change in  
166 administrative or judicial interpretation of any Applicable Law on or after the Effective Date  
167 (including a new or amended prevailing wage, minimum wage, living wage or similar laws or  
168 regulations), unless such Applicable Law was on or prior to the Effective Date duly adopted,  
169 promulgated, issued or otherwise officially modified or changed in interpretation, in each case in  
170 final form to become effective without any further action by any governmental body;

171 (B) The order or judgment of any governmental body issued on or after the Effective Date (unless  
172 such order or judgment is issued to enforce compliance with Applicable Law which was effective  
173 as of the Effective Date) to the extent such order or judgment is not the result of willful or  
174 negligent action, error or omission or lack of reasonable diligence of the Collection Contractor or  
175 Service Contractor, the County or the City, whichever is asserting the occurrence of a Change in  
176 Law; provided, however, that the contesting in good faith or failure in good faith to contest any  
177 such order or judgment shall not constitute or be construed as such a willful or negligent action,  
178 error or omission or lack of reasonable diligence; or

179 (C) Except with respect to any governmental approval required for the Project as provided in item (2)  
180 below pertaining to exclusions from "Change in Law", the denial of an application for, a delay in  
181 the review, issuance or renewal of, or the suspension, termination, or interruption of any  
182 governmental approval, or the imposition of a term, condition or requirement which is more  
183 stringent or burdensome than the Agreement standards in connection with the issuance, renewal  
184 or failure of issuance or renewal of any governmental approval, to the extent that such occurrence  
185 is not the result of willful or negligent action, error or omission or a lack of reasonable diligence  
186 of the Collection or Service Contractor, the County or the City, whichever is asserting the  
187 occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure  
188 in good faith to contest any such occurrence shall not be construed as such a willful or negligent  
189 action or lack of reasonable diligence.

190 It is specifically understood, however, that none of the following shall constitute a "Change in Law":

191 (1) A change in the nature or severity of the actions typically taken by a governmental body to enforce  
192 compliance with Applicable Law which was effective as of the Effective Date;

193 (2) All matters relating to the Service Contractor's assuming the Permitting risk for the Project in  
194 connection with obtaining and maintaining federal, State or local governmental approvals of the  
195 design, construction and operation of the Project; and

196 (3) Any event that affects generally applicable working conditions or standards that is not specific to  
197 the solid waste management industry.

198 "City", means the City of Goleta, California, a political subdivision of the State of California.

199 "City Agreement Representative", means the individual named by City under Exhibit B: Communications.

200 "City's Maximum Annual Delivery Allowance," means the maximum total annual Tonnages of Acceptable  
201 Materials, described in Section 4.2.A, that the City may deliver or the City's Collection Contractor may be  
202 directed to deliver on behalf of the City for each Agreement Year.

203 "City's Minimum Annual Delivery Requirement", means the minimum total annual Tonnage of Acceptable

## Material Delivery Commitment and Processing Services Agreement

204 Materials, described in Section 4.2.A, that the City will deliver or the City's Collection Contractor is directed  
205 to deliver on behalf of the City for each Agreement Year.

206 "City's Revenue Share", means the amount of TRRP Revenue that City receives from County under this  
207 Agreement.

208 "Collection Contractor", means anyone that collects Acceptable Materials for City by any or all of the  
209 following: 1) contract (including franchise contracts); 2) license; 3) permit; and, 4) any other obligation.

210 "Compost" means soil amendment material that is the result of the controlled aerobic decomposition  
211 process of Organic Materials (e.g., composting).

212 "Construction and Demolition Debris" means used or discarded construction materials removed from a  
213 premises during the construction or renovation of a structure resulting from construction, remodeling,  
214 repair, or demolition operations on any pavement, house, commercial building, or other structure  
215 including, but not limited to, concrete, brick, wood, dirt, rock, cardboard, packaging materials, etc.

216 "County", means the County of Santa Barbara, California, a political subdivision of the State of California.

217 "County Agreement Representative", means the individual named by County under Exhibit B.

218 "Current Revenues", means all gross income and revenue received or receivable by the County from the  
219 ownership, operation or use of the Solid Waste System, determined in accordance with Generally  
220 Accepted Accounting Principles, including all rates, fees, charges and revenue (including tipping fees,  
221 recovered materials revenue, power revenues and salvage income) received by the County for the use of  
222 Solid Waste System and all other income and revenue howsoever derived by the County from the  
223 ownership, operation or use of the Solid Waste System, but excluding in all cases any proceeds of taxes  
224 and any refundable deposits made to establish credit and advances or contributions in aid of construction.  
225 Current revenues also include direct federal subsidy payments received by the County relating to the  
226 Certificates issued as New Clean Renewable Energy Bonds.

227 "County Service Cost", means a component of the overall facility Acceptable Material Charge that is  
228 comprised of the following four (4) programs: Program 1200 (Tajiguas Landfill), Program 1101 (South  
229 Coast Recycling and Transfer Station), Program 1301 (Santa Ynez Recycling and Transfer Station) and  
230 Program 1850 (TRRP Contract Management, Environmental Monitoring and Regulatory Compliance). In  
231 addition, County Service Cost will include overhead costs allocated to these programs, except that no  
232 overhead costs will be allocated to closure, post-closure or regulatory fees.

233 "Day", means calendar day of twenty-four (24) hours measured from midnight to the next midnight.

234 "Delivery Covenant", means the obligation of the Public Participants to deliver Acceptable Materials to  
235 the TRRP, pursuant to and as described in Section 4.1.

236 "Direct Costs", means the sum of the following: 1) payroll costs (including compensation, vacation, sick  
237 leave, holidays, retirement, workers compensation insurance, federal and State unemployment taxes and  
238 medical and health insurance benefits), *plus*; 2) the costs of materials, services, direct rental costs and  
239 supplies, *plus*; 3) travel and subsistence costs, *plus*; 4) the reasonable costs of consultants,  
240 (sub)contractors, and counsel (necessary in connection with enforcement of the other Party's  
241 performance under this Agreement), *plus*; 5) any other cost or expense which is directly or normally

242 associated with that enforcement or exercise, which direct costs are substantiated to the satisfaction of  
243 the other Party.

244 “Dispose”; “Disposal” means the final disposition of Residue and Bypassed Waste from the Project Site as  
245 restricted by Permit conditions for Unacceptable Waste.

246 “Effective Date” means the date of this Agreement’s execution by the last of the Parties.

247 “Excess Tonnage”, means Tonnage of Acceptable Material delivered (or caused to be delivered) by the  
248 City to the Facilities in excess of the City’s Maximum Annual Delivery Allowance, and/or in excess of the  
249 Maximum Facility Capacity.

250 “Facility” or “Facilities”, means the building, equipment and all activities related to the MRF and/or the  
251 AD Facility.

252 “Food Scraps”, means all Organic Materials generated during or resulting from the storage, sale,  
253 preparation, cooking, or handling of food stuffs, including: (i) all kitchen and table food waste; (ii) animal  
254 or vegetable waste; (iii) discarded paper and cardboard that is contaminated with food; and, (iv) fruit  
255 waste, grain waste, dairy waste, meat and fish waste. Food Scraps are a subset of Organic Materials and  
256 contain less than 2% contamination by weight.

257 “Hazardous Waste”, means any waste which is defined or regulated as a hazardous waste, toxic waste,  
258 hazardous chemical substance or mixture, or asbestos under Applicable Law, including:

259 (1) “Hazardous Waste” pursuant to Section 40141 of the California Public Resources Code; all  
260 substances defined as acutely hazardous waste, extremely hazardous waste or hazardous waste  
261 by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California  
262 Hazardous Waste Control Act), and future amendments to or recodification of such statutes or  
263 regulations promulgated thereunder;

264 (2) “Hazardous Substances” as defined under Chapter 6.8 of the California Health and Safety Code,  
265 Division 20, Sections 25316 and 25317;

266 (3) Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as  
267 amended, and related Federal, State of California, and local laws and regulations, including the  
268 California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;

269 (4) Materials regulated under the Comprehensive Environmental Response, Compensation and  
270 Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder;

271 (5) Materials regulated under The Resource Conservation and Recovery Act and the regulations  
272 contained in 40 CFR Parts 260-281; and,

273 (6) Materials regulated under any future additional or substitute Federal, State or local laws and  
274 regulations pertaining to the identification, transportation, treatment, storage or Disposal of toxic  
275 substances or hazardous waste.

276 If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste  
277 adopt conflicting definitions of “hazardous waste”, for purposes of collection, transportation, Processing

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278 and/or Disposal, the broader, more restrictive definition shall be employed for purposes of this  
279 Agreement.

280 “Jurisdictional Rate Stabilization Fund”, means the fund held by the County for the purpose of enhancing  
281 System liquidity including making payments to the Service Contractor resulting from lower than expected  
282 Recovered Materials revenues.

283 “Landfill”, means the Tajiguas Landfill, a Subtitle D Disposal facility.

284 “Market” (or “Marketed” or “Marketing” or other variations thereof), means providing for the sale or  
285 placement of Recyclable Materials, electricity and Compost for the purpose of beneficial use.

286 “Material Recovery Facility” or “MRF”, means the Project Facility as described in Service Contractor’s  
287 Proposal and in subsequent documentation to be developed and operated by Service Contractor in which  
288 Processing equipment and systems are used to Process Acceptable Materials.

289 “Maximum Facility Capacity”, means the maximum number of Tons the Facility is designed, and the  
290 Contractor’s operating expenses are assumed, to Process.

291 “Mixed Waste”, means Municipal Solid Waste that is available for delivery for Processing and may be  
292 Processed at the Project, and is not Unprocessable Waste or Unacceptable Waste. Mixed Waste also  
293 includes commercial and industrial waste that meets the criteria defined herein, Construction and  
294 Demolition Debris, agricultural plastic, and tires. Mixed Waste does not include materials that are  
295 collected or delivered in a source-separated form.

296 “Monthly Service Payment”, means the monthly amount paid to the County by the Collection Contractors  
297 (on behalf of and overseen by the City) for delivery of Acceptable Materials for Processing at the Project  
298 Site, as described in Section 4.2.B.

299 “Municipal Solid Waste”; “MSW”, means generally the components of Mixed Waste, and specifically all  
300 substances or materials that are discarded or rejected as being spent, useless, worthless or in excess of  
301 the owner’s needs at the time of discard or rejection including, without limitation, all putrescible and non-  
302 putrescible solid and semi-solid waste including garbage, rubbish, maintenance waste, Yard Trimmings,  
303 bulky wastes, industrial wastes, Construction and Demolition Debris, and grit and sweepings from a water  
304 pollution control plant, which are generated by residential, commercial, industrial, institutional,  
305 municipal, agricultural and other activities and which are not otherwise restricted in a Class III landfill by  
306 State or federal regulations and which are delivered to the Project Site as Mixed Waste. Municipal Solid  
307 Waste does not include: (i) Hazardous Waste; (ii) medical waste; (iii) ash; (iv) Source-Separated Recyclable  
308 Materials; (v) Source-Separated Yard Trimmings; (vi) Source-Separated Food Scraps; or (vii) other  
309 materials collected separately from Municipal Solid Waste for Processing at the Project Site.

310 “Net Current Revenues” means for any Agreement Year, the Current Revenues during such Agreement  
311 Year less the System Costs during such Agreement Year.

312 “Net Revenues”, means for any Agreement Year, the Revenues during such Agreement Year less System  
313 Costs during such Agreement Year.

314 “Notice”; “Notify”, means notice given in accordance with Section 9.6 and Exhibit A.

## Material Delivery Commitment and Processing Services Agreement

315 “Operating Committee”; means a committee comprised of each Public Participant (including the County).  
316 Each Public Participant (including the County) will be allocated one representative on the Operating  
317 Committee. The Operating Committee can be called to order as necessary. The representative will be the  
318 City Manager or his/her designee who is authorized to vote on behalf of the represented Public  
319 Participant. Each representative will have a weighted vote proportionate to the amount of Acceptable  
320 Materials such Participant delivered during the Agreement Year as compared to the total amount of  
321 Acceptable Materials delivered by all Public Participants during the prior Agreement Year. A two-thirds  
322 vote is necessary to support a decision by the Operating Committee.

323 “Operating Reserve”, means the minimum balance of ten million dollars (\$10,000,000) to be maintained  
324 within the County Solid Waste Enterprise Fund or other fund established by the County necessary to  
325 operate the Solid Waste System, which includes the TRRP. Such minimum balance shall be consistent with  
326 the County’s Enterprise Fund Reserve Policy adopted by the County prior to the issuance of the  
327 Certificates.

328 “Organic Materials”, means: (i) materials intended for Processing by the AD Facility, which may include  
329 organics sorted out of Mixed Waste, Yard Trimmings, and Food Scraps; and, (ii) sludge and residuals from  
330 water and wastewater treatment, as further defined in the Service Contractor’s subcontract with the AD  
331 Facility Operator.

332 “Other County Costs” means other System Costs that are not in County Service Costs

333 “Other Users”, means any Person delivering Spot Market Materials to the Facility as authorized by the  
334 Service Contractor, and approved by the County, as applicable.

335 “Party; Parties”, means County and City, individually and together.

336 “Permit(s)” means all Federal, State, City, other local and any other governmental unit permits, orders,  
337 licenses, approvals, authorizations, consents and entitlements of whatever kind and however described  
338 which are required under Applicable Law to be obtained or maintained by any Person with respect to the  
339 Facilities or the performance of any obligation under this Agreement, as renewed or amended from time  
340 to time.

341 “Person”, means any individual, firm, association, organization, partnership, corporation, trust, joint  
342 venture, the United States, the State, a county, a municipality or special purpose district, or other entity  
343 whatsoever.

344 “Process”; “Processing” (or any other variation thereof), means the picking, pulling, sorting, separating,  
345 classifying and recovery of Recovered Materials from Acceptable Materials by the Service Contractor at  
346 the Project Site. Processing also means the baling, crushing, shredding, chipping, grinding or any other  
347 method of preparing Acceptable Materials for further Processing (for example, at the AD Facility) or  
348 Marketing.

349 “Project”; “TRRP”, means all aspects of the Tajiguas Resource Recovery Project as conducted at the Project  
350 Site. “Project Site”; “Site”, means the area at the Tajiguas Landfill property to be used by the County and  
351 Service Contractor for development of the Facility, including one or more discrete sites including, but not  
352 limited to the “Operations Deck” and a composting area (“Top Deck”).

353 “Promptly”, means as soon as possible, and no longer than three (3) Business Days unless the Parties



354 otherwise agree in writing.

355 “Public Participants”, means any jurisdiction which enters into an individual Material Delivery  
356 Commitment and Processing Service Agreement with the County, excluding Other Users. The City is a  
357 Public Participant.

358 “Reasonable Business Efforts”, means those efforts that a reasonably prudent business Person would  
359 expend under the same or similar circumstances in the exercise of such Person’s business judgment,  
360 intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken  
361 to satisfy; provided that such Person and/or any enterprise by which such Person is employed would not  
362 incur a financial loss (other than time expended or otherwise compensated for such efforts herein) by  
363 reason of having expended or expending such efforts.

364 “Recovered Materials”, means Recyclable Materials and Organic Materials recovered through Processing  
365 of Acceptable Materials.

366 “Recyclable Materials”, means materials having economic value or a beneficial reuse which are commonly  
367 recovered in comparable materials recovery facilities and organics Processing facilities in California.

368 “Reimbursement Costs”, means the Direct Costs that the Party incurs to enforce its rights or exercise its  
369 remedies under this Agreement *plus* an amount equal to the average interest rate payable on the  
370 California Local Agency Investment Fund in effect when the Direct Costs were incurred.

371 “Revenue Fund” or “Solid Waste Enterprise Fund; means Fund No. 1930 in the County’s financial  
372 accounting system in which Current Revenues will be deposited and from which System Costs will be  
373 dispersed.

374 “Revenues” means Current Revenues plus deposits to the Revenue Fund from amounts on deposit in the  
375 Bond Holders Rate Stabilization Fund, but only as and to the extent specified in the Bond Documents.

376 “Service Agreement”, means the contract between the County of Santa Barbara and MSB Investors, LLC  
377 for development and operation of the TRRP.

378 “Service Contractor”, means the Contractor defined in the Service Agreement between the County of  
379 Santa Barbara and MSB Investors, LLC.

380 “Service Contractor’s Proposal”, means the Service Contractor’s document(s) included in Exhibit J to the  
381 Service Agreement, and all related materials submitted subsequently prior to the Effective Date  
382 “Shortfall Charge”, means the charge incurred by the City for failure to meet the City’s Minimum Annual Delivery  
383 Requirement (i.e., if the actual tonnage delivered and paid for is less than the committed tons). The charge  
384 will equal the number of tons short of the City’s Minimum Annual Delivery Requirement multiplied by the  
385 effective Acceptable Material Charge.

386 “Solid Waste System”; “System” means all solid waste collection, processing, diversion, composting,  
387 recycling, disposal and power generation facilities (including related equipment) and any other facilities  
388 related thereto now owned by the County, and all other facilities (including related equipment) for solid  
389 waste collection, processing, diversion, composting, recycling, disposal and power generation hereafter  
390 acquired and constructed by the County and such other facilities, which may or may not be owned by the  
391 County, determined by the County to be a part of the Solid Waste System. Solid Waste System shall not

392 include any Special Facilities.

393 “Source-Separated Food Scraps”, means Food Scraps, containing less than two percent (2%)  
394 contamination by weight, segregated from other Municipal Solid Waste prior to collection. Source-  
395 Separated Food Scraps may be collected separately or commingled with Yard Trimmings. Source-  
396 Separated Food Scraps are Organic Materials.

397 “Source-Separated Organic Materials”, means Source-Separated Food Scraps, or combined Food Scraps  
398 and Yard Trimmings, containing less than two percent (2%) contamination by weight, that are collected  
399 separately from Municipal Solid Waste.

400 “Source-Separated Recyclable Materials”, means Recyclable Materials, containing less than 15%  
401 contamination by weight, that are separated by the generator from Municipal Solid Waste, provided for  
402 collection by individual material type or as combined materials in a single-stream program, and are  
403 delivered to the Project for Processing and transport to Market.

404 “Source-Separated Yard Trimmings”, means Yard Trimmings, containing less than two percent (2%)  
405 contamination by weight, segregated from other Municipal Solid Waste prior to collection. Source-  
406 separated yard trimmings are not included in the City’s Minimum Annual Delivery Requirement.

407 “Spot Market Material”, means Acceptable Material generated within Santa Barbara County and delivered  
408 to the Facility by or on behalf of Other Users.

409 “State”, means the State of California.

410 “Surplus Fund”, means on June 1 and December 1 of each year, beginning on June 1, 2017, all remaining  
411 money in the Revenue Fund after making the foregoing deposits shall be withdrawn from the Revenue  
412 Fund and deposited by the County in the Surplus Fund. Moneys in the Surplus Fund may be applied for  
413 any lawful purpose of the County relating to the Solid Waste System.  
414

415 “System Costs”, means all reasonable and necessary costs paid or incurred by the County for maintaining  
416 and operating the Solid Waste System, determined in accordance with Generally Accepted Accounting  
417 Principles, including all reasonable expenses of management and repair and other expenses necessary to  
418 maintain and preserve the Solid Waste System in good repair and working order, state mandated  
419 surcharges, and the annual costs of any permits or licenses, but excluding debt service costs, and including  
420 all administrative costs of the County that are charged directly or apportioned to the operation of the  
421 Solid Waste System, such as salaries, wages, and pension and other post-employment benefits of  
422 employees, overhead, taxes (if any) and insurance premiums, and including all other reasonable and  
423 necessary costs of the County or charges required to be paid by the County to comply with the terms  
424 hereof or of any resolution authorizing the issuance of any Certificates (as defined in the Bond Documents)  
425 or of such Certificates, or of any resolution authorizing the execution of any contract (as defined in the  
426 Bond Documents) or of such contract, such as compensation, reimbursement and indemnification of the  
427 trustee for any such Certificates or contracts and fees and expenses of independent certified public  
428 accountants and independent engineers, insurance consultants, but excluding in all cases depreciation,  
429 replacement and obsolescence charges or reserves therefor, amortization of intangibles and  
430 intergovernmental transfers by the County which are not reimbursements or payments for overhead or  
431 other administrative expenses incurred by the County. System Costs do not include payments by the

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432 County from funds in the Jurisdictional Rate Stabilization Fund (i) to the Public Participants pursuant to  
433 the terms and provisions of this Agreement, and (ii) to the Service Contractor.

434 "Target Value", means the targeted amount of funds to be kept in the Jurisdictional Rate Stabilization  
435 Fund of \$3,000,000.

436 "Ton"; "Tonnage", means a short Ton of 2,000 pounds.

437 "TRRP Revenue(s)", means revenue from the sale of any or all of the following, without regard to source:

438 (A) Sale of Recyclable Materials

439 (B) Sale of Compost

440 (C) Sale of electricity

441 (D) Share of Spot-Market tipping fees

442 (E) Any other revenues generated as a result of changes in law or other from regulatory-driven factors  
443 occurring after and not otherwise incorporated into Service Contractor's pro-forma

444 "TRRP Service", means any or all of Service Contractor's obligations that are described in the Service  
445 Agreement, including development, operations (throughput, recovery, residue, electric output, net  
446 electricity generated, and environmental performance), maintenance, Marketing, etc.

447 "Unacceptable Waste" means wastes that the TRRP may not receive under its Permits, including but not  
448 limited to:

449 (A) Asbestos, including friable materials that can be crumbled with pressure and are therefore likely  
450 to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which  
451 may be a Hazardous Waste if it contains more than one percent (1%) asbestos;

452 (B) Ash residue from the incineration of Municipal Solid Wastes, including infectious waste described  
453 in item (G) below, wood waste, sludge, and agricultural wastes.;

454 (C) Auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances  
455 which remains after the shredding of automobiles;

456 (D) Large dead animals;

457 (E) Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials;

458 (F) Industrial solid or semi-solid wastes resulting from industrial processes and manufacturing  
459 operations, including cement kiln dust, ore process residues and grit or screenings removed from  
460 waste water treatment facility;

461 (G) Infectious wastes which have disease transmission potential and are classified as Hazardous  
462 Wastes by the State Department of Health Services, including pathological and surgical wastes,  
463 medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings,

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464 bottles, drugs, patient care items such as linen or personal or food service items from  
465 contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical  
466 purposes or with known infectious diseases;

467 (H) Liquid wastes which are not spadeable, usually containing less than fifty percent (50%) solids,  
468 including cannery and food processing wastes, landfill leachate and gas condensate, boiler  
469 blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings,  
470 rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous  
471 Wastes;

472 (I) Radioactive wastes as defined in Section 114710 of the California Health and Safety Code and any  
473 waste that contains a radioactive material, the storage or Disposal of which is subject to any other  
474 State or federal regulation;

475 (J) Special wastes designated from time to time by the Department of Resources Recycling and  
476 Recovery (CalRecycle), including contaminated soil;

477 (K) Bulky items that cannot fit within standard roll-off containers or Mixed Waste/Municipal Solid  
478 Waste collection vehicles unless otherwise approved by Service Contractor.

479 The Parties shall Promptly conform this definition of "Unacceptable Waste" to the extent necessary to  
480 comply with Applicable Law, should a Change in Law or in Permits and Permit requirements necessitate.

481 "Uncontrollable Circumstances", means any act, event or condition that is beyond the reasonable control  
482 of the Party relying thereon as justification for not performing a County Obligation or a City Obligation as  
483 defined in Article 3 and 4 respectively, or complying with any condition required of such Party under this  
484 Agreement, and that materially interferes with or materially increases the cost of performing its  
485 obligations hereunder (other than payment obligations), to the extent that such act, event or condition is  
486 not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or  
487 breach of the this Agreement on the part of such Party. The only effect of such Uncontrollable  
488 Circumstance is that it allows for a temporary cessation of delivery of materials by the City and/or the  
489 provision of service by the County to the extent that the delivery of materials by the City or the provision  
490 of service by the County is prevented by the Uncontrollable Circumstance. The occurrence of an  
491 Uncontrollable Circumstance expressly does not allow for a cessation of payment of the Monthly Service  
492 Payment. Such acts or events may include, but shall not be limited to, the following:

493 (A) Naturally occurring events (except weather conditions normal for the Santa Barbara area) such as  
494 landslides, underground movement, earthquakes, fires, tornadoes, tidal waves, floods, epidemics,  
495 storms, and other acts of God, ionizing radiation, nuclear, radioactive, chemical or biological  
496 contamination;

497 (B) Explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, civil  
498 war, armed conflict, terrorism, blockade, embargo, or insurrection, riot or civil disturbance;

499 (C) Labor disputes, except labor disputes involving employees of the Service Contractor, its affiliates,  
500 or subcontractors that affect the performance of the TRRP Services;

501 (D) The failure of any subcontractor or supplier (other than the Collection Contractor, Service  
502 Contractor, Service Contractor's guarantor, or any affiliate of either) to furnish services, materials,

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503 chemicals or equipment on the dates agreed to, but only if such failure is the result of an event  
504 which would constitute an Uncontrollable Circumstance if it affected the Collection Contractor,  
505 or Service Contractor directly, and the Collection Contractor or the Service Contractor are not able  
506 after exercising all Reasonable Business Efforts to timely obtain substitutes;

507 (E) The failure of any private utility to provide and maintain utilities to the TRRP which are required  
508 for the performance of this Agreement;

509 (F) Any failure of title to the Project Site or any enforcement of any encumbrance on the Project Site  
510 not consented to in writing by, or arising out of any action or agreement entered into by, the Party  
511 adversely affected thereby;

512 (G) The preemption of materials or services by a governmental body in connection with a public  
513 emergency or any condemnation or other taking by eminent domain of any material portion of  
514 the Facility;

515 (H) The temporary suspension of operations due to supervening authority of law, such as the  
516 designation of all or a portion of the TRRP as a crime scene or as the site of an investigation by  
517 law enforcement;

518 (I) A Change in Law.

519 It is specifically understood that, without limitation, none of the following acts, events or circumstances  
520 shall constitute Uncontrollable Circumstances:

521 (1) Any act, event or circumstance with respect to which the Service Contractor has assumed the "as-  
522 is" risk under the Service Agreement;

523 (2) Any act, event or circumstance that would not have occurred if the affected Party had complied  
524 with its obligations under the this Agreement;

525 (3) Changes in interest rates, inflation rates (other than those provided for in this Agreement), labor  
526 costs, insurance costs, commodity prices, currency values, exchange rates or other general  
527 economic conditions, with the exception of changes resulting from a Change in Law;

528 (4) Changes in the financial condition of the County, the Contractor, the Guarantor, or the City  
529 affecting the ability to perform their respective obligations;

530 (5) The consequences of error, neglect or omissions by the Service Contractor in the performance of  
531 the TRRP Services;

532 (6) Union or labor work rules, requirements or demands, which have the effect of increasing the  
533 number of employees employed, or overtime hours required, at the Project or otherwise  
534 increasing the cost to the Service Contractor for meeting Service Contractor obligations under the  
535 Service Agreement, provided that such are not the result of a Change-in-Law;

536 (7) Mechanical failure of equipment not itself due to an Uncontrollable Circumstance;

537 (8) Power outages not caused by third party utilities;

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- 538 (9) Reasonably anticipated weather conditions for the geographic region of Santa Barbara County;
- 539 (10) Any act, event, circumstance or Change-in-Law occurring outside the United States of America,  
540 unless it has a clear, direct and measurable impact on the ability of a Party to perform its  
541 contractual obligations;
- 542 (11) Failure of the Service Contractor to secure applicable patents, provided that such failure is due to  
543 the acts, omissions or negligence of the Service Contractor;
- 544 (12) A Change-in-Law pertaining to taxes, which does not discriminate against Service Contractor; or
- 545 (13) Any Change-in-Law (including the issuance of any governmental approval, the enactment of any  
546 statute, or the promulgation of any regulation) the terms and conditions of which do not impose  
547 more stringent or burdensome requirements on the Service Contractor than are imposed by the  
548 Service Agreement.
- 549 “Unprocessable Waste”, means materials that Service Contractor cannot Process due to size or other  
550 characteristics (e.g., oversized, bulky items) and that may be delivered to the Landfill for Disposal.
- 551 “Yard Trimmings”, means those discarded materials that will decompose and/or putrefy, including, but  
552 not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree  
553 trimmings, dead trees, small pieces of unpainted and untreated wood, and other types of organic waste.  
554 Yard Trimmings are Organic Materials.
- 555 “Year”, means a calendar year of January 1 through December 31, *unless* an Agreement Year is explicitly  
556 specified.

557 **ARTICLE 2: TERM OF AGREEMENT**

558 **2.1 Effective Date**

559 This Agreement shall be dated as of, and become effective on, the date of its execution by the last of the  
560 Parties.

561 **2.2 Agreement Term**

562 This Agreement shall terminate December 31, 2038 (approximately 22 Years from the Effective Date) and  
563 shall include the construction periods (allowing for Facility construction and acceptance testing) as well  
564 as twenty (20) Years of operation; provided, however in no event shall this Agreement terminate while  
565 any Certificates are outstanding.

566 **2.3 Survival of Certain Provisions**

567 The following provisions survive this Agreement’s term:

- 568 (A) Parties’ representations, certifications, warranties and acknowledgements;
- 569 (B) Amounts that the City owes County, and County owes City;
- 570 (C) Any other rights and obligations of the Parties accrued prior to expiration or termination of this  
571 Agreement; and,
- 572 (D) Any other rights and obligations of the Parties expressly stated to survive this Agreement’s term.

## 573 **ARTICLE 3: COUNTY'S OBLIGATIONS**

### 574 **3.1 Solid Waste Management Services**

575 Commencing on July 1, 2017 (based on the June 2016 schedule attached as Exhibit C of the Service  
576 Agreement), the County shall provide or cause the provision of the service of receiving and processing,  
577 treating, and/or disposing of Acceptable Materials from the Public Participants at the System (including  
578 such other facilities, including transfer stations, as the County may determine to use in the event that the  
579 Project or other existing components of the System are unavailable for any reason, as described in Section  
580 3.6). The County, to the maximum extent permitted under Applicable Law, shall use its Reasonable Best  
581 Efforts to keep the Project and the existing landfill open for the receipt of waste for processing, transfer  
582 or disposal of Acceptable Materials pursuant to this Agreement. The County shall do and perform all acts  
583 and things which may be necessary or desirable in connection with its covenants in this subsection,  
584 including without limitation all planning, development, administration, implementation, construction,  
585 operation, maintenance, management, financing and contract work related thereto or undertaken in  
586 connection therewith. The County shall exercise all reasonable efforts to minimize the costs incurred in  
587 complying with its obligations and responsibilities under this Agreement, Applicable Law, the Bond  
588 Documents, and prudent solid waste management practice and environmental considerations. The  
589 County shall enforce the provisions of all agreements with third parties relating to the Project.

### 590 **3.2 Facility Revenues**

#### 591 **A. Jurisdictional Rate Stabilization Fund**

592 Annually, the County will deposit into the Jurisdictional Rate Stabilization Fund amounts held in the  
593 Surplus Fund (as established under the Bond Documents) net of (i) payment of System subordinate  
594 obligations; (ii) capital improvements of the System; (iii) any replenishment of the Operating Reserve; and  
595 (iv) the payment by or reimbursement of revenue to the County of any non-County Service Costs or  
596 revenues that are excluded from this Agreement as described in Exhibit F.

597 County shall continue to contribute, solely from the amounts held in the Surplus Fund established under  
598 the Bond Documents, to the Jurisdictional Rate Stabilization Fund with the goal of maintaining a minimum  
599 fund balance of three million dollars (\$3,000,000) (Target Value). If at the end of any Agreement Year, the  
600 Jurisdictional Rate Stabilization Fund exceeds three million five hundred thousand dollars (\$3,500,000)  
601 (Cap Value), the Public Participants will receive a dividend to return the fund to three (3) million dollars  
602 (\$3,000,000) based upon the actual amount and type of Tons delivered to the Facilities in the given year  
603 as identified in the Service Agreement. The County shall separately account for expenses made from and  
604 contributions to the Jurisdictional Rate Stabilization Fund and shall present these to the City during the  
605 Annual Settlement Process (as described in Section 4.3.B). Any funds remaining in the Jurisdictional Rate  
606 Stabilization Fund at the end of the Agreement Term shall be accounted for during the final Annual  
607 Settlement Process. Within ninety (90) days of the end of the Agreement Term, the County shall refund  
608 to the City its proportionate share of the entire remaining cumulative balance of the Jurisdictional Rate  
609 Stabilization Fund.

#### 610 **B. Materials Revenue Shares**

##### 611 **1. Calculation**

612 Subject to satisfying the requirements of the Bond Documents, in the event that the Jurisdictional Rate



613 Stabilization Fund balance exceeds the Cap Value, the County shall, during the Annual Settlement Process  
 614 (described in Section 4.3.B), distribute the amount of any additional TRRP Revenues to the Public  
 615 Participants (in proportion to the amount of annual Tons delivered by waste stream responsible for the  
 616 material revenues), in an amount calculated as follows, and as further described in Exhibit D:

- 617 a. City's Tons of Acceptable Materials by material type (e.g., Mixed Waste, Source-Separated  
 618 Recyclable Materials, Source-Separated Organic Materials) actually delivered to the TRRP;
- 619 b. Multiplied by an equivalent tonnage factor based on actual market values of the materials from  
 620 the previous Agreement Year (e.g. if Source-Separated Recyclable Materials commodity values are  
 621 twice as high as Mixed Waste commodity values, the Source-Separated Recyclable Materials  
 622 equivalent tonnage factor would be "2", and Mixed Waste equivalent tonnage factor would be  
 623 "1");
- 624 c. Summed for all material types, to arrive at a single equivalent tonnage value per City;
- 625 d. Divided by the aggregate Tons of Acceptable Materials actually delivered to the TRRP, and adjusted  
 626 by the equivalent tonnage factors, to arrive at a percentage;
- 627 e. Multiplied by the total available disbursement amount;
- 628 f. Minus any money that the City owes the County.

## 629 2. Example

630 For example, as applied to Source-Separated Recyclable Materials and as defined in B. 1 a – f above:

631 Assumptions:

- 632 a. **10 Tons:** City's Collection Contractor delivers 10 Tons of Source-Separated Recyclable Material.
- 633 b. **2:** Source-Separated Recyclable Materials equivalent Tonnage factor, assuming Source-Separated  
 634 Recyclable Materials commodity values were agreed to be twice as high as Mixed Waste  
 635 commodity values.
- 636 c. **1000 Tons:** Aggregate of 1000 Tons of adjusted equivalent Tonnage from all sources and material  
 637 types delivered by Public Participants to the Project.
- 638 d. **\$3,500,000:** Jurisdictional Rate Stabilization Fund Balance has reached the Cap Value of  
 639 \$3,500,000.
- 640 e. **\$500,000:** County's available disbursement amount to return the Jurisdictional Rate Stabilization  
 641 Fund to the Target Value is \$500,000 (assuming the funds identified in Section 3.2.A are fully  
 642 funded).
- 643 f. **\$500:** City owes County outstanding balance of Shortfall Charge of \$500.

644 Equation:

645 
$$((10 \text{ Tons} * 2) / 1,000 \text{ equivalent Tons}) = 2\%$$

646 
$$(2\% * \$500,000) - \$500 = \$9,500 = \text{City's dividend amount}$$

## 647 C. Payment Dates

648 County will distribute any TRRP Revenues that are due to the Public Participants in accordance with the

649 Materials Revenue Share as described in Section 3.2 B and the Annual Settlement Process (described in  
650 Section 4.3.B) within thirty (30) Days of receipt of revenues from Service Contractor, subject to  
651 confirmation that the City has satisfied the requirements of the Bond Documents and Operating Reserve,  
652 and has met preconditions related to any Shortfall Charges, prior to distribution.

#### 653 **D. Limited Obligation**

654 County's obligation with respect to materials revenue sharing is limited to TRRP Revenues that County  
655 receives and which are not subsequently recovered from County by a trustee in bankruptcy, creditor of  
656 the Service Contractor or other Person. City acknowledges that County may not receive any TRRP  
657 Revenues from Service Contractor for multiple reasons, including:

- 658 1. Service Contractor's failure to generate revenues from identified sources, or
- 659 2. Attachment of those revenues by creditors of Service Contractor who have a secured interest prior  
660 to the County's interest.

### 661 **3.3 Non-monetary Credits or Offsets**

662 The Parties acknowledge that the Project depends upon the waste streams of the participating  
663 jurisdictions for feedstock and the revenues from the Minimum Monthly Service Payments of the  
664 participating jurisdictions to pay the debt service for the construction of the Project and the Project's  
665 operating expenses. In recognition of this partnership, the Parties agree (to the extent such an  
666 agreement is not in conflict with any preemptive legal authority) that any future non-monetary credits  
667 or offsets that may accrue under any legislative, administrative, or regulatory programs or systems from  
668 the reduction of greenhouse gas emissions due to the operation of the Project shall be allocated  
669 proportionately amongst the participating jurisdictions based upon the following ratio: the participating  
670 jurisdiction's actual tonnage delivered/total tons delivered to the Facility from all Public Participants.  
671 This allocation of credits and offsets does not apply to:

- 672 1. Renewable energy credits that have been previously allocated to Southern California Edison  
673 pursuant to the power purchase agreement between MSB Investors, LLC and Southern California Edison,
- 674 2. Revenues already included in the Service Contractor's pro-forma or the County's  
675 financing or Other County Costs, or
- 676 3. Revenues generated as a result of changes in law or other regulatory-driven factors  
677 occurring after and not otherwise incorporated into the Service Contractor's pro-forma, which are  
678 incorporated into the definition of TRRP Revenues.  
679

### 680 **3.4 Exercise of Contractual Rights**

#### 681 **A. Notification**

682 County will notify City, no later than thirty (30) Days prior, of any upcoming County Board meeting prior  
683 to exercising County's rights and obligations under the Service Agreement that the County does not  
684 delegate to the County Agreement Representative. The obligation to notify the City does not prevent the  
685 County from unilaterally exercising such rights and obligations. Examples include:

- 686 1. Giving Notices to proceed, and full or partial Facility acceptance; and,
- 687 2. Exercising certain enforcement actions and remedies.

**688 B. City's Individual Rights**

689 County authorizes City to exercise the following rights of the County under the Service Agreement, at  
690 City's option:

- 691 1. Entering Facility during normal hours of Facility operation, and/or,
- 692 2. Accessing Service Contractor's books and records during normal business hours as well as access  
693 to electronic records available on-line from the Contractor and County.

**694 C. No Modification Without City Consent**

695 Except for routing change orders necessary for the construction and operation of the Facility as described  
696 in the Service Agreement, County will not modify the Service Agreement in any way that changes City's  
697 obligations, or City's rights under this Section 3.4, without City consent.

**698 3.5 Annual Facility Review Meeting**

699 County shall hold an annual meeting with City and other Public Participants to review the Service  
700 Contractor's Processing efforts, and overall performance under this Agreement. The purpose of such  
701 meeting is to provide for a discussion and review of technological, economic, and regulatory changes in  
702 collection, source reduction, Processing and Disposal to achieve a continuing, advanced materials  
703 Processing and Disposal system; and to ensure services are being provided by County and the Service  
704 Contractor with adequate quality, effectiveness and economy, and in full compliance with the terms of  
705 this Agreement.

706 County shall notify City of its intent to hold an annual review meeting at least sixty (60) days in advance  
707 thereof.

708 In addition, City may request a meeting with County to discuss the issues described herein at any time  
709 during the Agreement Term, and County shall arrange such meeting within thirty (30) Days of City request.

**710 3.6 Services During Uncontrollable Events**

711 In the event of an Uncontrollable Circumstance, County shall make Reasonable Business Efforts to receive  
712 materials delivered by City's Collection Contractor, and to promptly and cost effectively provide materials  
713 processing and disposal services either through facilities within the County's Solid Waste System or using  
714 alternative waste management facilities. The County commits to seeking all reimbursable funds from any  
715 and all insurance policies providing coverage for loss or damage resulting from such events to return the  
716 TRRP and Landfill to operations. If the cost to repair the TRRP and landfill exceed the available insurance  
717 proceeds, the County will prepare a plan and budget to return the facilities to operational status and  
718 submit this information to the Operating Committee for consideration under Section 4.3.D.3. Moreover,  
719 since the type, scope and limits of the required insurance coverage secured by the Contractor and the  
720 County for the TRRP was determined after review and consultation by the City of Santa Barbara, any  
721 significant changes in the type, scope or limits of insurance coverage for the TRRP will be subject to review  
722 by the Operating Committee.

723

**724 A. Disposal Facility Available**

725 In the event an Uncontrollable Circumstance occurs which prevents Processing of materials by the TRRP  
726 but does not preclude Disposal in the Landfill, County shall Dispose of the materials and shall make

727 Reasonable Business Efforts to provide alternative material Processing capacity.

728 **B. Disposal Facility Not Available**

729 In the event an Uncontrollable Circumstance occurs which prevents Processing of materials by the TRRP  
730 and Disposal in the Landfill, the County, shall not abandon the Solid Waste System and shall continue to  
731 provide disposal capacity sufficient to enable it to comply with the terms hereof; provided, that, the  
732 County may provide such capacity by making available transfer and/or disposal facilities owned and  
733 operated by the County or by making contractual or other arrangements for the use of transfer and/or  
734 disposal facilities (either inside or outside the geographic boundaries of the County) owned or operated  
735 by persons other than the County. In the event of loss or damage to any material portion of the Solid  
736 Waste System or the occurrence of any other event which prevents the County from accepting solid waste  
737 at the facilities or the Solid Waste System, the County will use Reasonable Business Efforts to take  
738 whatever actions are within its powers to provide other facilities or services necessary to provide the solid  
739 waste management services necessary to maintain Net Current Revenues and Net Revenues as required  
740 under the Bond Documents. If the efforts necessary to replicate the performance of the TRRP are not  
741 economically feasible based on the Current Revenues and any available insurance proceeds, the County  
742 shall convene a meeting of the Operating Committee to discuss the options available to provide disposal  
743 and processing services that most closely replicate the performances of the TRRP within the limits of the  
744 Current Revenues and any available insurance proceeds.

## 745 **ARTICLE 4: CITY'S OBLIGATIONS**

### 746 **4.1 Acceptable Materials Delivery Requirement and Monthly Payments**

747 Commencing on July 1, 2017, the Public Participants will deliver or direct their respective Collection  
748 Contractor to deliver to the Solid Waste System all Acceptable Materials that the Collection Contractor  
749 collects under its contract with City. Public Participants shall also pay or cause their respective Collection  
750 Contractor(s) to pay the then-applicable Monthly Service Payment based on the Acceptable Materials  
751 Charge established pursuant to this Agreement. The obligations of the Public Participants pursuant to this  
752 section shall be referred to here as the "Delivery Covenant."

753 In order to meet the Delivery Covenant, each Public Participant agrees to maintain collection franchises  
754 or other contractual arrangements (or utilize municipal collection) to manage collection of all Acceptable  
755 Materials generated within its jurisdiction while the Certificates are outstanding.

756 Each such franchise or contract shall require, as a condition of the franchise or contract, that the hauler  
757 deliver Acceptable Materials which it collects to the Solid Waste System, or to alternate facilities  
758 designated by the County in the event the Solid Waste System is unavailable for any reason as discussed  
759 in Section 3.6.

### 760 **4.2 City's Annual Deliveries**

#### 761 **A. Tonnage**

762 City will deliver (or cause to be delivered) its City's Minimum Annual Delivery Requirement up to its City's  
763 Maximum Annual Delivery Allowance (as described in Figure I, below) to the MRF, AD Facility or  
764 composting operations area on the Project Site (or other site designated by the County), as Service  
765 Contractor directs, by either or both of the following means:

- 766 • Municipal collection: collecting Acceptable Materials itself, using municipal employees; or
- 767 • Contract collection: directing Collection Contractors to deliver Acceptable Materials using  
768 Collection Contractors' employees, subcontractors or other third Persons.

#### 769 **1. Contamination**

770 The TRRP Revenues are based on the receipt of Mixed Waste, Source-Separated Recyclable Materials,  
771 and Source-Separated Organic Materials. Each of the Source Separated materials have limits of the  
772 contamination they may contain as described in the Definitions. Should higher levels of contamination  
773 occur, more material will be classified as Mixed Waste and less TRRP Revenue will be received.

774 If County demonstrates a material increase in contamination of Source Separated Recyclable Materials  
775 and Source Separated Organic Materials delivered to the TRRP, the County and the Service Contractor  
776 shall attempt to determine the source and cause of the increased contamination. If the source of the  
777 contamination cannot be identified, the County will propose certain actions (e.g., targeted public  
778 outreach programs, tagging of containers and collection of materials in the tagged containers as solid  
779 waste, etc.) to be implemented uniformly by all users of the Facility. The Operating Committee shall  
780 consider the Service Contractor's and County's findings and recommendations and either adopt those  
781 recommended actions or modify them and adopt the modified actions and all users of the Facility shall  
782 uniformly implement such actions within six (6) months.

783 If the County demonstrates by substantial evidence that the increased contamination is attributable to  
784 the City, then the County will notify the affected City. If the City does not agree with the County's  
785 findings as to the cause of the contamination, a third party that is mutually agreeable to the City and  
786 the County will be hired to review the County's evidence and make a determination of the cause of the  
787 increased contamination. If the City does not dispute the County's original finding as to the cause of  
788 the increased contamination or if the third party attributes the cause of the increased contamination  
789 to the City, then the City will have ninety (90) days to prepare a course of action (e.g., targeted public  
790 outreach programs, tagging of containers and collection of materials in the tagged containers as solid  
791 waste, etc.) to address the identified contamination including a description of the change(s), the  
792 timeline for the change(s), and the anticipated impact(s) of the change(s). Within sixty (60) days of  
793 receipt of the City's proposed actions (Proposal) to correct the contamination, County shall prepare  
794 and deliver to City a written response to the proposed change (Response). If the City does not agree  
795 with the original findings of the County or Service Contractor or the County does not agree to the  
796 Proposal prepared by the City to address the contamination issue, a third party that is mutually  
797 agreeable to the City and County will be hired to review the County or Service Contractor's findings  
798 and the City's Proposal, and make a recommendation to address the issue. The cost for the third party  
799 will be split between the County and the City and the third party's decision shall be binding upon the  
800 City and the County. The City will implement actions associated with the third party's decision within  
801 six (6) months.

## 802 **2. Quantities**

803 In the event that in any Agreement Year City delivers (or causes to be delivered) Tons in excess of the  
804 City's Minimum Annual Delivery Requirement but less than the City's Maximum Annual Delivery  
805 Allowance, City shall be charged for each additional Ton at the then current Acceptable Materials  
806 Charge, during the Annual Settlement Process, as described in Section 4.3.B.

807 In the event that in any Agreement Year City delivers (or causes to be delivered) Tons in excess of the  
808 City's Maximum Annual Delivery Allowance but the facility has received fewer Tons than the Facility  
809 Maximum Annual Delivery Allowance, City shall be charged for each additional Ton at the then current  
810 Acceptable Materials Charge, during the Annual Settlement Process, as described in Section 4.3.B.

811 In the event that in any Agreement Year City anticipates or is projected by the County or the Service  
812 Contractor to deliver (or cause to be delivered) Tons in excess of the Facility Maximum Annual Delivery  
813 Allowance, City may be allowed to deliver (or cause to be delivered) the additional Tons at the  
814 Acceptable Materials Charge based on the terms determined in accordance with Section 4.3.C.2.

815

816 **Figure I - City's Minimum Annual Delivery Requirement and Maximum Delivery Allowance**

**“City’s Minimum Annual Delivery Requirement”** means at least the following Total Tons of Acceptable Materials relating to the City. (Specific Tons of Mixed Waste, Source-Separated Recyclable Materials and Source-Separated Organic Materials are listed separately only for the purpose of calculating revenue shares under Section 3.2.B.)\*

	Mixed Waste (Tons)	Source-Separated Recyclable Materials (Tons)	Source-Separated Organic Materials (Tons)**: <ul style="list-style-type: none"> <li>• Source-Separated Food Scraps, or</li> <li>• Source-separated Food Scraps and Yard Trimmings (combined)</li> </ul>	Total
<b>City’s Minimum Annual Delivery Requirement Total Tons</b>	22,074	5,618	600	<b>28,292</b>
<b>City’s Maximum Annual Delivery Allowance Total Tons</b>	26,930	6,854	732	<b>34,516</b>

817 \* *The Minimum Annual Delivery Requirement(s) shall be increased to reflect City annexation of any*  
 818 *property subsequent to the execution of this Agreement.*

819 \*\* *While Source-Separated yard trimmings may be delivered to the Anaerobic Digestion Facility, such*  
 820 *material is not included in the tonnage commitment of each jurisdiction.*

821 **B. Collection Contract Obligations**

822 City *must* include obligations under this Section 4.2 as performance specifications and contractual  
 823 obligations in an agreement with its Collection Contractor as well as any Permits, licenses or other  
 824 regulatory instruments allowed under law.

825 **1. Delivery of All Acceptable Materials**

826 The City or its Collection Contractor must deliver to the Project Site (or other site designated by the  
 827 County) all Acceptable Materials that it collects under its collection contract with the City.

828 **2. Tajiguas Landfill Tip Fee Increase Beginning July 1, 2017**

829 Beginning, July 1, 2017, the City agrees to pay a tipping fee increase for disposal of waste at the Tajiguas  
 830 Landfill at a rate of ninety nine (\$99) dollars per ton. The revenue generated by this increase will fund the  
 831 Jurisdictional Rate Stabilization Fund. For Fiscal year 2019, beginning July 1, 2018, the City agrees to pay  
 832 a tipping fee of one hundred ten (\$110) dollars per ton. For Fiscal Year 2020, beginning July 1, 2019, the  
 833 County shall establish the Acceptable Materials Charge pursuant to Section 4.3A and the limitations in  
 834 Section 4.3D shall not apply. The limitations on the amount by which the County may adjust the  
 835 Acceptable Materials Charge for the upcoming Agreement Year as set forth in Section 4.3D will not take  
 836 effect until fiscal year 2021 on July 1, 2020. Notwithstanding the above, the Acceptable Material Charge  
 837 will be set as required by the Bond Documents.

**838 3. Monthly Service Payment Requirement Upon Commencement of Operations**

839 The City or its Collection Contractor shall pay County a Monthly Service Payment as provided in this  
840 Section 4.2.B.3.

841 The Monthly Service Payment is calculated and paid monthly based on the City's Minimum Annual  
842 Delivery Requirement shown in Section 4.2.A multiplied by the applicable Acceptable Materials Charge  
843 shown in Section 4.3.A divided by twelve (12). The Monthly Service Payment shall be the monthly amount  
844 represented in the following formula.

845 + Acceptable Material Charge

846 x City's Minimum Annual Delivery Requirement (Total Tons)

847 / 12 months

848 = Monthly Service Payment

849 The Annual Settlement Process, defined in Section 4.3.B, identifies any necessary adjustments to the  
850 twelve (12) Monthly Service Payments made for the previous Agreement Year to reflect actual Tonnages  
851 delivered and other payments owed to, or by Collection Contractor. Should City's actual Tonnages  
852 delivered during the Agreement Year significantly exceed what would be expected based on the City's  
853 Minimum Annual Delivery Requirement and should this materially affect the County's cash flow payments  
854 to the Service Contractor, or the County's ability to comply with the Bond Documents, then the Parties  
855 shall meet and confer to compensate the County for such an impact and/or adjust the future Minimum  
856 Annual Delivery Requirement to minimize the cash flow impact on the County in the future.

**857 C. City Agreement to Exercise Collection Contract Remedies**

858 If the Collection Contractor does not meet any or all contractual requirements in Section 4.2.B and Section  
859 4.3, City shall exercise any or all remedies available at law or equity under its contract with the Collection  
860 Contractor to fulfill such requirements.

861 The failure of the City's Collection Contractor to pay County any sums due it in accordance with this  
862 Agreement and or Uncontrollable Circumstances do not excuse City from its obligation to pay the Monthly  
863 Service Payment and/or Acceptable Material Charges for materials that Collection Contractor delivered  
864 above the tonnage assumed in the Monthly Service Payment and Service Contractor accepted at Facilities.

**865 D. Consent to Changes**

866 The City and County acknowledge that changes to the City's collection contracts or programs may  
867 negatively impact the costs and revenues of the County and other Public Participants involved with the  
868 TRRP. The City may therefore amend its collection contract(s) or collection programs only if the City  
869 mitigates all impacts to the County and other Public Participants (including impacts such as reduced  
870 revenues to the County, or reduced Current Revenues available for debt service obligations) which may  
871 result from such amendments. General examples of "change" include expiration/termination, extension,  
872 re-procurement/replacement and amendments to collection agreements. Specific examples of "change"  
873 are stopping collection of Source-Separated Recyclable Materials; or delivering Acceptable Materials in a  
874 different configuration such as a "Wet/Dry" collection system. The City Administrator, or his or her  
875 designee, is authorized to propose and negotiate changes pursuant to this Subsection D subject to the



876 approval of the City Council prior to implementation.

877

878 **1. Refuse, Recyclable and Organic Materials Other Than Yard Trimmings**

879 If City wishes to propose a change to its collection contract or collection program, concerning materials  
880 other than Yard Trimmings, then the City and County shall abide by the following procedures:

881 • City shall send County and other Public Participants a written proposal detailing the proposed  
882 change(s) to the collection contract. The proposal shall: describe the change(s), identify the  
883 timeline for the change(s), identify the anticipated impact(s) of the change(s), and include the  
884 methods by which it proposes to use to cause no new current and future negative financial  
885 impacts to the County and other Public Participants. The proposal shall be sent to the County  
886 and other Public Participants at least twelve (12) months before the intended effective date of  
887 the proposed changes, which shall coincide with an Agreement Year.

888 • Within ninety (90) days of receipt of City's proposal, County (which may consult with the Service  
889 Contractor) shall (and other Public Participants may) prepare and deliver to City a written  
890 response to the proposed change as it relates to the TRRP (Response) including any additional  
891 impacts and possible mitigation measures not considered by City but required of the City or the  
892 County, to fully mitigate the impact on the County and the other Public Participants and to  
893 generate sufficient revenue for the County to meet the requirements of its Bond Documents.

894 • Thereafter, the City and County (and as appropriate the other Public Participants and Service  
895 Contractor) shall meet, for a period not to exceed six (6) months, to negotiate the terms related  
896 to the implementation of City's requested change (based upon analysis performed by the City,  
897 the County, other Public Participants and the Service Contractor). Should the City and County  
898 reach agreement, then the City shall implement the change according to their original schedule  
899 but not sooner than thirty (30) days following agreement.

900 • Should the City and County (and as appropriate the other Public Participants and Service  
901 Contractor) not reach agreement, within the six-month negotiating period or upon either party  
902 declaring an impasse then within thirty (30) days of reaching impasse, the County (and as  
903 appropriate, the Operating Committee) shall submit to the City, the terms related to the City's  
904 requested change to which the County is unable to agree. Once the City receives the list of terms  
905 to which the County is unable to agree, the City may submit the points of disagreement to a third  
906 party that is mutually agreed upon by the City and County. The third party shall evaluate the  
907 points of disagreement and shall develop a set of proposals that would enable the adoption of  
908 the City's requested change while mitigating revenue losses or cost increases related to the  
909 proposed change in order to enable the County to continue to meet the requirements of the  
910 Bond Documents. The Party submitting the proposal to affect a change shall pay the direct costs  
911 for the third party and the City and County will each be responsible for other costs associated  
912 with analyzing the proposal.

913 • Following the receipt of the third party's proposals, the City shall have thirty (30) days to elect  
914 to proceed with its proposed change in a manner consistent with one of the third party's  
915 proposals or to elect to not implement the change. If the City elects to proceed with the change,  
916 the consultant's proposal shall be binding upon the City and the County.

917

918 **2. Yard Trimmings**

919 Source-Separated Yard Trimmings are not included in the City's Minimum Annual Delivery Requirement.  
920 Therefore, the City is entitled to direct its Source-Separated yard Trimmings wherever it chooses.  
921 Notwithstanding the foregoing, the City acknowledges that if it redirects Source Separated Yard  
922 Trimmings out of the Solid Waste System, there may be financial impacts that may affect revenues and  
923 thus the County's commitments under the Bond Documents. Notwithstanding any provisions of this  
924 Subsection D to the contrary, the City shall not be required to mitigate these impacts for a period longer  
925 than five (5) years from the date of implementing the change.

926

927 Should City wish to direct its Source-Separated Yard Trimmings (which are not included in the City's  
928 Minimum Annual Delivery Requirement) to a facility other than the Tajiguas Landfill, then City and County  
929 shall abide by the following procedures:

930

931 • City shall send County a written proposal to direct its Source Separated Yard Trimmings to a facility  
932 other than the Tajiguas Landfill. The proposal shall: describe the change, identify the timeline for  
933 the change, identify the impact(s) of the change, and include the methods by which it proposes  
934 to cause no negative financial impacts to the County or other users of the System for a period not  
935 to exceed five (5) years. The proposal shall be sent to the County at least twelve (12) months  
936 before the intended effective date of the proposed change, which shall coincide with an  
937 Agreement Year.

938 • Within ninety (90) days of receipt of City's proposal, County (which may consult with other Public  
939 Participants) shall prepare and deliver to City a written response to the proposed change to the  
940 Solid Waste System (Response) that includes a fiscal analysis and any additional impacts (meet  
941 and confer with labor organizations regarding layoff's, modification to service contracts, early  
942 retirement and sale of equipment, etc.) and possible mitigation measures (e.g., contracting for  
943 grinding services) not considered by City but required of the City or the County, to fully mitigate  
944 the impact on the County (and other Public Participants) and allow the County to generate  
945 sufficient revenue to meet the requirements of the Bond Documents.

946

947 • Thereafter, the City and County shall meet, for a period not to exceed sixty (60) days, to negotiate  
948 the terms related to the implementation of City's requested change (based upon the City's  
949 proposal and the County's Response). Should the City and County reach agreement on proposed  
950 mitigations to be implemented by the County, and, if necessary, a schedule of payments by the  
951 City to the County to address fiscal impacts, that shall in no case exceed five (5) years, then the  
952 City shall provide written notice to County of its intention to implement the proposed change  
953 according to its original schedule but not sooner than the following Agreement Year or to  
954 withdraw its proposed change.

955

956 • Should the City and County not reach agreement after sixty (60) days, City and County shall  
957 identify and hire a third party that is mutually agreed upon by the City and County to consider  
958 the City's Proposal and the County's Response and (1) develop a plan that identifies steps by which  
959 the County could decrease costs related to the provision of yard trimming processing and  
960 marketing services and a timeline for divestment of equipment, staffing and infrastructure, to  
961 which the County shall abide, as well as determining the amount of remaining financial impacts

962 to the County that are not addressed by the plan, and (2) shall provide a schedule of payments  
963 that City shall make to County as a condition of the proposed change for up to five (5) years from  
964 the date of implementing the change. The Party submitting the proposal to affect a change shall  
965 pay the direct costs for the third party.

966  
967 • Within sixty (60) days following the completion of the third party's plan, the City shall provide  
968 written notice to County of its intention to implement the proposed change which shall coincide  
969 with an Agreement Year or to withdraw its proposed change.

970 • If the third party's recommendation requires a change in operations for the County and/or a  
971 schedule of payments owed by the City, within three (3) months of receiving City's notice, the  
972 County will be required to begin to implement the operational change.

973 • The City will not redirect its yard Trimmings until twelve (12) months have elapsed from the date  
974 of Facility Full Operations.

### 975 **4.3 Compensation and Annual Settlement Process**

#### 976 **A. Acceptable Materials Charge**

977 Notwithstanding anything to the contrary contained in this Agreement, each year the County shall  
978 establish, and each Public Participant shall contribute (or cause its Collection Contractor to contribute), a  
979 per-ton charge (the Acceptable Materials Charge) based on budgeted projections which, in the aggregate,  
980 are sufficient to generate Net Revenues and Net Current Revenues (after taking into account revenues  
981 from the sale of Recyclable Materials, the proceeds of insurance and Current Revenues and other receipts)  
982 in an amount at least equal to all amounts required to be paid or incurred by the County to provide the  
983 services set forth in Section 3.1, to meet the requirements of the Bond Documents, and to replenish any  
984 reserves established hereunder.

985 The County may make adjustments from time to time to such charges, fees and rates and may make such  
986 classification thereof as it deems necessary, but shall not reduce the charges, fees and rates then in effect  
987 unless the Net Revenues and Net Current Revenues from such reduced charges, fees and rates will at all  
988 times be sufficient to meet the requirements set forth above. The parties acknowledge that the obligation  
989 of the County to require each Public Participant to deliver waste to the System and to remit the Acceptable  
990 Materials Charge calculated annually based on budgeted projections is absolute and unconditional as long  
991 as the County performs its obligations under Section 3.1 to receive and process, treat or dispose of  
992 Acceptable Materials, regardless of whether all or any portion of the Facility (i) is completed by the  
993 scheduled completion date, (ii) operates in accordance with the specifications set forth in the Service  
994 Agreement, (iii) generates the products that are identified in the Service Agreement, (iv) generates  
995 products that in fact have an actual market or market value, or (v) achieves diversion levels consistent  
996 with the projections contained in the proforma of the Service Agreement.

#### 997 **B. Annual Settlement Process**

998 The Annual Settlement Process is used to reconcile the Monthly Service Payments paid over a full  
999 Agreement Year with the actual results of operations for the following components:

1000 1. Actual tons delivered by the City to the Project

- 1001           2. County's actual results of operations, as described in Exhibit E, for County Service Costs
- 1002           3. Amounts due to, or receivable from, Service Contractor based on actual TRRP Revenues during  
1003           the previous Agreement Year.
- 1004           4. All other County obligations, including debt service and capital expenditures

1005           The calculated amount due from the City, or payable to the City, will be subject to the Flow of Funds as  
1006           presented in Exhibit F.

1007           Within forty-five (45) Days of the conclusion of each Agreement Year, County shall provide City and  
1008           Collection Contractor an "Annual Settlement Process Statement." setting forth the determination of  
1009           outstanding payments, amounts due, or financial obligations of the City directly or through its designated  
1010           Collection Contractor, with respect to the given Agreement Year. The Annual Settlement Process  
1011           Statement shall include a reconciliation of the amount owed, pursuant to Exhibit E, with the amounts  
1012           actually paid by City or Collection Contractor with respect to the given Agreement Year including tonnage  
1013           of material delivered by type, TRRP revenues from the Contractor and allocated to the City, and the  
1014           statement of any necessary contributions to the Jurisdictional Rate Stabilization Fund. The Annual  
1015           Settlement Process Statement shall also identify any excess reserves due and payable to the City.

1016           In the event that City desires to review or contest the contents of the Annual Settlement Process  
1017           Statement, within thirty (30) days of receipt of the Statement, City may request to meet with County, and  
1018           County shall arrange to meet with City within thirty (30) Days of City request. If there continues to be a  
1019           difference between the County's and City's calculation of the amounts due, the Parties will meet and  
1020           confer to resolve their differences for a period of not more than thirty (30) days. The obligation to have  
1021           such a meeting does not confer on the City a right to revise or stop the settlement payment. If there is  
1022           not a dispute, the amount due from either Party will be paid within forty five (45) days of receiving or  
1023           sending the Statement. If there is a dispute and if the Certificates issued for the Facility financing are  
1024           outstanding the Parties shall use the process described in Section 5.2 below; if the Certificates issued for  
1025           the Facility financing are not outstanding then the Parties shall use the process described in Section 5.3  
1026           below.

1027           **C. Exceedance of Maximum Annual Delivery Allowance**

- 1028           1. Should the Tonnage attributable to the City that can be delivered to the Facility exceed the  
1029           City's Maximum Annual Delivery Allowance but not cause the Facility to exceed its Maximum  
1030           Facility Capacity, the County, City, and other Public Participants shall meet to determine, under  
1031           what terms the City may deliver the Excess Tonnage.
- 1032           2. Should the Tonnage attributable to the Public Participants that can be delivered to the Facility  
1033           exceed the Maximum Facility Capacity, the County, Public Participants, and Service Contractor  
1034           shall meet to determine if the Service Contractor can accommodate the Excess Tonnage, and if  
1035           so at what adjustment to the Acceptable Materials Charge. County and City shall meet to  
1036           determine what other adjustments might be made to the Acceptable Material Charge (e.g., a  
1037           reduction to the annual debt service component of the Acceptable Material Charge). If the  
1038           County and City agree, then the City may deliver the Excess Tonnage to the Facility.

1039           **D. Adjustments**

1040           Each January, the County will distribute a draft Annual Budget for the System. The Annual Budget will

1041 contain an estimate of the Current Revenues and System Costs payable from Current Revenues for the  
1042 ensuing Agreement Year, (beginning on the upcoming July 1). The Annual Budget will disaggregate the  
1043 cost and revenue components into four categories including 1) Contractor cost, 2) debt service cost  
1044 including the debt coverage amount required as defined in the Bond Documents, 3) County Service Cost,  
1045 and 4) Other County Costs (that will not be a component of the Acceptable Material Charge for the  
1046 Facility). The Annual Budget will also contain an estimate of the amount of Acceptable Materials expected  
1047 to be delivered to the System in such Agreement Year, and the resulting Acceptable Materials Charge  
1048 required to be imposed in order for the County to meet the requirements of the Bond Documents.

1049

1050 Beginning in fiscal year 2021, beginning July 1, 2020, in the case of any financial shortfalls (either higher  
1051 than projected costs or lower than projected revenues) related to the Facility, the replenishment of funds  
1052 by the jurisdictions shall only be included as part of the annual budget process pursuant to the limitations  
1053 discussed below.

1054 1. If the proposed change in the Acceptable Materials Charge is equal to or less than seven and  
1055 one-half percent (7.5%), the City shall adjust collection rates a commensurate amount and  
1056 direct its Collection Contractor to pay the corresponding Monthly Service Payment effective  
1057 the following Agreement Year. In no case shall the Acceptable Materials Charge be adjusted  
1058 by a negative value. If the calculated adjustment is a negative value, the adjustment shall be  
1059 set to "one" (1). For example, if the Acceptable Material Charge is \$116 per ton and the  
1060 calculated adjustment was - 0.3 percent, then the \$116 per ton would be multiplied by 1 and  
1061 result in \$116 per ton.

1062 2. If the change in the Acceptable Materials Charge is greater than seven and one-half percent  
1063 (7.5%), or the cumulative adjustments total fifteen percent (15%) or more in the past three  
1064 (3) consecutive years, and if two-thirds of the Public Participants representing at least two-  
1065 thirds of the annual amount of Acceptable Materials delivered during the previous year object  
1066 to the rates proposed by the County, the Operating Committee shall be convened (within 30  
1067 days of receipt of Annual Budget) and shall be charged with establishing rates sufficient to  
1068 generate (after taking into account revenues from the sale of Recyclable Materials, the  
1069 proceeds of insurance and other receipts), Net Current Revenues during each Agreement Year  
1070 equal to 100% of Debt Service for such Agreement Year, Net Revenues during each Agreement  
1071 Year equal to fifty percent (50%) of the Debt Service for such Agreement Year plus, in each  
1072 case, all other amounts required to be paid by the County to provide the services set forth in  
1073 Section 3.1 and to meet the requirements of the Bond Documents.

1074 3. If two-thirds of the Operating Committee representing at least two-thirds of the annual  
1075 amount of Acceptable Materials delivered during the previous year vote to adopt the rates  
1076 proposed by the Operating Committee, such rates shall be utilized. If two-thirds of the  
1077 Operating Committee representing at least two-thirds of the annual amount of Acceptable  
1078 Materials delivered during the previous year do not approve such alternate rates, or should  
1079 the alternate rates not be approved by two-thirds of the Operating Committee within forty five  
1080 (45) Days of convening the Operating Committee, then the initial rates proposed by the County  
1081 shall be approved. The resolution of the Acceptable Materials Charge must be complete by  
1082 April 1 of the preceding Agreement Year before its effective date.

1083

1084

**1085 ARTICLE 5: SUSPENSION AND TERMINATION****1086 5.1 Notice of Default**

1087 Should either Party default in the performance of Articles 3 or 4 of this Agreement or materially breach  
1088 any of its provisions, except as the result of an uncontrollable circumstance, the Party claiming such  
1089 default shall provide the Party a notice of default to the Party claimed to have defaulted. In such Notice,  
1090 the Party claiming such default, shall provide a description of the specific incidents giving rise to such  
1091 default or breach and identify the requested cure. Upon receipt of notice, the Party claimed to be in  
1092 default shall notify the Party claiming such default as to the status of its performance. Thereafter, the  
1093 Parties shall meet and confer in an attempt to remedy such incidents.

**1094 5.2 Resolution When Facility Financing Certificate(s) Outstanding**

1095 While the Certificates for the Facility financing are outstanding, the only remedy for default shall be  
1096 specific performance and there shall be no suspension or termination of the Agreement. If the Parties  
1097 cannot agree on such remedies and the claimed default or breach occurs while any Certificates issued for  
1098 the financing of the Facility are outstanding, the matter shall be submitted to binding arbitration using an  
1099 independent arbitrator. If either Party wishes to select an arbitrator, each Party shall prepare a separate  
1100 list of five (5) independent arbitrators having experience, as applicable in the Development of, or  
1101 operation of similar solid waste-related facilities, in numerical order with the first preference at the top,  
1102 and exchange and compare lists. The independent arbitrator ranking highest on the two (2) lists by having  
1103 the lowest total rank order position on the two (2) lists shall be the Independent Arbitrator. In case of a  
1104 tie in scores, the Independent Arbitrator having the smallest difference between the rankings of the two  
1105 (2) Parties shall be selected; other ties shall be determined by a coin toss. If no independent arbitrator  
1106 appears on both lists, this procedure shall be repeated. If selection is not completed after the exchange  
1107 of three (3) lists or sixty (60) Days, whichever comes first, then each Party shall select one independent  
1108 arbitrator having experience described above and the two (2) arbitrators so selected shall together select  
1109 an Independent Arbitrator. The Independent Arbitrator shall make its determination based on the  
1110 submissions of the Parties, the provisions hereof, and other factual determinations it may make regarding  
1111 the matter in dispute, but in any case such determination must not adversely impact the County's ability  
1112 to comply with the terms of the Bond Documents. The determination of the Independent Arbitrator shall  
1113 be binding. The Parties shall share the costs of the Independent Arbitrator equally for the first three  
1114 dispute resolutions brought in any twelve (12) month period commencing on July 1, and thereafter shall  
1115 be borne by the loser, as determined by the Independent Arbitrator.

**1116 5.3 Resolution When Facility Financing Certificate (s) Not Outstanding**

1117 If the Parties cannot agree on such remedies and the claimed default or breach does not occur during the  
1118 period when any Certificates issued for the financing of the Facility are outstanding, the Parties may  
1119 exercise any legal rights they have under the Agreement and under Applicable Law, including to secure  
1120 specific performance.

1121 **ARTICLE 6: RECORDS AND REPORTS**

1122 **6.1 Records**

1123 **A. Contents**

1124 County will keep records of its administration and enforcement of the Service Agreement. An example is  
1125 Tonnage of each type of Acceptable Material that the City delivers to the TRRP, as well as aggregate  
1126 Tonnage of materials delivered on a Spot-Market Materials basis to the TRRP.

1127 **B. Access**

1128 Upon City request, County shall make operational and business records (including scale house data)  
1129 available to City during Landfill hours, and shall provide on-line access or printed copies of records as  
1130 described in 3.4.B.

1131 **6.2 Reports**

1132 County will report to City on administration and enforcement of the Service Agreement. An example is a  
1133 report on results of the Annual Settlement Process.

**1134 ARTICLE 7: ENFORCEMENT****1135 7.1 Enforcement****1136 A. Law and Equity**

1137 If either County or City does not meet its obligations under this Agreement, the other Party may exercise  
1138 any and all available remedies under law and equity, including specific performance. Specific performance  
1139 is an appropriate remedy to enforce City's obligation to deliver Acceptable Materials to the TRRP, for the  
1140 same reasons described under Section 4.2.C above with respect to the Collection Contractor.

**1141 B. Shortfall Charges**

1142 If City does not meet its City's Minimum Annual Delivery Requirement it will pay any consequent City's  
1143 Shortfall Charge within thirty (30) Days of County request, including payment by its Collection Contractor.  
1144 County may do either or both of the following:

- 1145 1. Deduct the Shortfall Charge or any other money that City owes the County from any TRRP  
1146 Revenue shares that the County owes City, or
- 1147 2. Exercise any other remedy under Section 7.1.A, above.

**1148 7.2 Uncontrollable Circumstances****1149 A. General**

1150 Either Party's failure to meet its contract obligations, other than the payment of money such as the  
1151 Shortfall Charge, will *not* be deemed an event of default if all of the following conditions are met:

- 1152 1. The event of default is caused by Uncontrollable Circumstances;
- 1153 2. The event of default is explicitly subject to Uncontrollable Circumstances under this Agreement;  
1154 and,
- 1155 3. The party relying on the Uncontrollable Circumstance exerted Reasonable Business Efforts to  
1156 prevent the occurrence and mitigate the effects of the Uncontrollable Circumstance.

1157 Despite a Party claiming that an Uncontrollable Circumstance prevents it from fulfilling its obligations,  
1158 such Party shall remedy the problem and perform its obligations as soon as possible.

**1159 B. Notice**

1160 The Party experiencing an Uncontrollable Circumstance will give immediate Notice to the other Party,  
1161 including all of the following:

- 1162 1. Describing performance under this Agreement for which it seeks to be excused;
- 1163 2. The expected duration of the Uncontrollable Circumstance;
- 1164 3. The extent to which Agreement Services may be curtailed; and,
- 1165 4. Any requests or suggestions to mitigate the adverse effects of the Uncontrollable Circumstance.



1166 **7.3 Jurisdiction, Venue, Service of Process**

1167 **A. Exclusive State Court Jurisdiction**

1168 County and City will bring any lawsuits arising out of this Agreement in State courts, which will have  
1169 exclusive jurisdiction over the lawsuits.

1170 **B. Venue**

1171 Venue is made and will be performed in courts sitting in the County of Santa Barbara.

1172 **C. Location**

1173 County and City will conduct any other hearing or action (such as mediation or arbitration), of whatever  
1174 nature or kind regarding this Agreement, in the City of Santa Barbara.

1175 **D. Service of Process**

1176 County and City will accept service of process at the address where they receive Notices.

1177 **7.4 Governing Law**

1178 This Agreement is governed by, and construed and enforced under, the laws of the State of California,  
1179 without giving effect to the State's principles of conflicts of laws.

1180 **7.5 Costs**

1181 Subsequent to a judicial decision upholding the complaining Party's complaint, the other Party will pay  
1182 the complaining Party's Reimbursement Costs reasonably incurred to enforce its rights or exercise its  
1183 remedies for the other Party's failure to meet its obligations under this Agreement. This obligation is a  
1184 general, not limited or special, obligation of each Party.

1185 **ARTICLE 8: ASSIGNMENT**

1186 **8.1 Assignment**

1187 Neither Party shall Assign its rights nor delegate or otherwise transfer its obligations under this Agreement  
1188 to any other Person without the prior written consent of the other Party to the Assignment. Any such  
1189 Assignment made without the consent of the other Party shall be void and the attempted Assignment  
1190 shall constitute a material breach of this Agreement.

## 1191 **ARTICLE 9: MISCELLANEOUS PROVISIONS**

### 1192 **9.1 Entire Agreement**

1193 This Agreement contains the entire agreement between the Parties with respect to their rights and  
1194 obligations under this Agreement, including the enforcement and administration of this Agreement. This  
1195 Agreement supersedes all prior understandings and agreements between the Parties with respect to their  
1196 rights and obligations, including those contained in drafts, memorandums, correspondence, telephone  
1197 calls, meetings and their respective County Board and City Council sessions.

1198 However, if words defined in this Agreement conflict with definitions in the Service Agreement, the  
1199 definition under the Service Agreement governs.

### 1200 **9.2 Amendments**

1201 The Parties may make changes in this Agreement after the Effective Date, effective only upon signing a  
1202 written amendment to this Agreement.

### 1203 **9.3 Severability**

#### 1204 **A. Court Rulings Generally**

1205 If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or  
1206 unenforceable in any respect, then such provision or provisions shall be deemed severable from the  
1207 remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other  
1208 provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable  
1209 provision had never been contained herein.

#### 1210 **B. Court Rulings: Delivering Materials to TRRP**

1211 However, in the ruling of invalidity, illegality, non-binding nature or unenforceability of any Agreement  
1212 Provision, under Section 9.3.A, with respect to the City's Minimum Annual Delivery Requirements,  
1213 obligations of County, or obligations of City's Collection Contractor to deliver materials to the TRRP; then  
1214 the County Board of Supervisors may, in its sole discretion, do any of the following:

- 1215 1. Accept the ruling without deleting or enforcing that Agreement Provision;
- 1216 2. Delete that Agreement Provision and construe and enforce this Agreement under this Section; or,
- 1217 3. Terminate this Agreement if Service Contractor accedes.

### 1218 **9.4 Interpretation**

1219 City acknowledges the following:

- 1220 1. It commented on the form of this Agreement with advice of its attorneys.
- 1221 2. It entered into this Agreement upon its own choice and initiative, in order to meet its goals  
1222 described in the Recitals above.
- 1223 3. It agrees that no one can construe any provision in this Agreement against County solely because  
1224 County prepared this Agreement in its executed form.
- 1225 4. It understands that this Agreement is an essential aspect of the Certificate financing process, and

1226 agrees to cooperate in providing information required for the financing process, including  
1227 information for the official statement and rating process.

1228 County represents and warrants as follows:

- 1229 a. It has reviewed and commented upon this Agreement with advice of its attorneys.
- 1230 b. It entered into this Agreement upon its own choice and initiative, in order to meet its goals  
1231 described in the Recitals above.

1232 Therefore, this Agreement must be interpreted and construed reasonably and neither for nor against  
1233 either Party, regardless of the degree to which had either Party participated in its drafting.

## 1234 **9.5 Timely Performance**

### 1235 **A. Specified Days on Weekdays**

#### 1236 **1. Performance**

1237 If a Party must perform an obligation under this Agreement within a specified number of Days, and the  
1238 last Day falls on a weekend or holiday, the obligated Party may perform that obligation on the next  
1239 weekday following the weekend or holiday. For example, if City must provide documentation to County  
1240 within thirty (30) Days of County request and the 30<sup>th</sup> Day falls on a Sunday, City must give County the  
1241 documentation by the next Day, Monday.

#### 1242 **2. Counting**

1243 Each calendar Day is counted when determining the last Day of the specified number of Days. For  
1244 example, if County must provide documentation to City within one (1) week of City's request on a Friday,  
1245 City must give County the documentation by the next Friday.

### 1246 **B. Specified Hours on Any Day**

1247 If a Party must perform an obligation under this Agreement at a specified time, in any of the following  
1248 events the obligated Party must perform that obligation within the specified time, *even if* the time for  
1249 performance falls on a weekend or holiday:

- 1250 1. The specified time is measured in hours;
- 1251 2. The County specifies the time (for example, on a Saturday even though performance would  
1252 otherwise occur on Monday); or,
- 1253 3. County determines that there is a threat to public health or safety.

## 1254 **9.6 Notices, Etcetera**

### 1255 **A. Location**

1256 Parties must give Notices at the addresses that they identify in Exhibit A.

### 1257 **B. Notice**

1258 Parties may give Notices such as Notice of default, only by any of the following ways:

- 1259 1. Email or facsimile followed as soon as possible (but no more than two (2) Days) by personal or  
1260 mailed delivery;
- 1261 2. Personal delivery to County Agreement Representative or City Agreement Representative;
- 1262 3. Deposit in the United States mail first class postage prepaid (certified mail, return receipt  
1263 requested); or,
- 1264 4. Commercial delivery service providing delivery verification.

1265 **C. "Notice"**

1266 Parties may give "notice" (not capitalized) by either Party of a routine administrative issue (such as results  
1267 of the Annual Settlement Process or date of a County Board meeting) orally (for example, by telephone  
1268 or computerized communication); and electronically (for example, by email).

1269 **D. Change of Address**

1270 Parties may change their address for Notice upon giving a Notice to that effect to the other Party.

1271 **9.7 Writing**

1272 Parties must make all of the following in writing unless oral communication is explicitly allowed:

- 1273 • requests, demands, orders, directions,  
1274 • acceptances, consents, approvals, agreements,  
1275 • waivers,  
1276 • exercise of options or rights, selections,  
1277 • proposals,  
1278 • reports, and  
1279 • acknowledgments, certifications, representations and warranties.

1280 Explicit reference to "written" or "writing" with respect to any one communication does not imply that  
1281 other communications without explicit reference to writing may be oral. "Writing" includes any means of  
1282 printed language, including hard copy and emails.

1283 **9.8 Exercise of Options**

1284 Parties exercise of any approval, disapproval, option, discretion, satisfaction, determination, election,  
1285 consent or choice under this Agreement is deemed reasonable, unless this Agreement specifically  
1286 provides otherwise, such as in a Party's "independent", "sole", "exclusive" or "absolute" "control",  
1287 "judgment", or "discretion".

1288 **9.9 Parties' Agreement Representatives**

1289 **A. County Agreement Representative**

1290 **1. Named**

1291 On the Effective Date, the County Agreement Representative is the Deputy Director of the County Public

1292 Works Department (Resource Recovery and Waste Management Division). The Deputy Director's address  
1293 is listed in Exhibit B.

1294 **2. Authority**

1295 County authorizes the County Agreement Representative to act on behalf of County in the administration  
1296 of this Agreement, unless it specifically names another individual. By signing this Agreement, County  
1297 delegates to County Agreement Representative the authority to exercise County rights, remedies and  
1298 options under this Agreement and administer this Agreement, except with respect to:

- 1299 a. Extending the term;  
1300 b. Suspending or terminating this Agreement;  
1301 c. Approving or disapproving Assignment or transfer of this Agreement; and,  
1302 d. Exercising any delegation of authority contrary to law.

1303 **B. City Agreement Representative**

1304 **1. Named**

1305 City will name its City Agreement Representative by Notice to the County.

1306 **2. Authority**

1307 City authorizes City Agreement Representative to act on behalf of the City under this Agreement. County  
1308 may assume that City has delegated its City Agreement Representative to exercise rights, remedies and  
1309 options under this Agreement and administer this Agreement.

1310 **9.10 Signing Multiple Copies**

1311 The Parties may sign any number of copies of this Agreement. All signed copies are deemed to be one  
1312 Agreement.

1313 **9.11 Authority to Sign**

1314 **A. County**

1315 The County warrants that it duly authorized the officers listed below to sign this Agreement on behalf of  
1316 County.

1317 **B. City**

1318 The City warrants that it duly authorized the individuals listed below to sign this Agreement on behalf of  
1319 City.

1320

1321 **IN WITNESS WHEREOF**, the Parties have executed this Contract to be effective on the date  
1322 executed by COUNTY.

1323

1324 **ATTEST:**  
1325 Mona Miyasato  
1326 County Executive Officer  
1327 Clerk of the Board

**COUNTY OF SANTA BARBARA:**

1328  
1329 By: \_\_\_\_\_  
1330 Deputy Clerk

By: \_\_\_\_\_  
Chair, Board of Supervisors

1331

1332  
1333 **RECOMMENDED FOR APPROVAL:**  
1334 Santa Barbara County Public Works  
1335 Department

Date: \_\_\_\_\_

1336  
1337 By: \_\_\_\_\_  
1338 Scott D. McGolpin  
1339 Public Works Director

1340

1341 **APPROVED AS TO FORM:**  
1342 Michael C. Ghizzoni  
1343 County Counsel

**APPROVED AS TO ACCOUNTING FORM:**  
Theodore A. Fallati, CPA  
Auditor-Controller

1344  
1345 By: \_\_\_\_\_  
1346 Deputy County Counsel

By: \_\_\_\_\_  
Deputy

1347

1348 **APPROVED AS TO FORM:**  
1349 Risk Management

1350  
1351  
1352 By: \_\_\_\_\_  
1353 Risk Management

1354 **ATTEST:**  
1355 CITY CLERK

**CITY OF BUELLTON**

1356 By: \_\_\_\_\_  
1357 [INSERT NAME]  
1358

By: \_\_\_\_\_  
Mayor  
[INSERT NAME]

1359 Date: \_\_\_\_\_

1360 **APPROVED AS TO FORM:**  
1361 **CITY ATTORNEY**

1362 By: \_\_\_\_\_  
1363 [INSERT NAME]



1364 **ATTEST:**  
1365 CITY CLERK

**CITY OF GOLETA**

1366 By: \_\_\_\_\_  
1367 [INSERT NAME]  
1368

By: \_\_\_\_\_  
Mayor  
[INSERT NAME]

1369 Date: \_\_\_\_\_

1370 **APPROVED AS TO FORM:**  
1371 **CITY ATTORNEY**

1372 By: \_\_\_\_\_  
1373 [INSERT NAME]

**CITY OF SANTA BARBARA**

1374 ATTEST:  
1375

1376 By: \_\_\_\_\_  
1377 Sarah Gorman  
1378 City Clerk Services Manager

By: \_\_\_\_\_  
Paul Casey  
City Administrator

1379  
1380  
1381  
1382  
1383

Date: \_\_\_\_\_

1384  
1385 APPROVED AS TO CONTENT:

1386  
1387  
1388 By: \_\_\_\_\_  
1389 Robert Samario  
1390 Finance Director

1391  
1392 APPROVED AS TO FORM:

1393 Ariel Pierre Calonne  
1394 City Attorney  
1395  
1396  
1397 By: \_\_\_\_\_

1398  
1399

1400

1401 **ATTEST:**  
1402 CITY CLERK

**CITY OF SOLVANG**

1403 By: \_\_\_\_\_  
1404 [INSERT NAME]  
1405

By: \_\_\_\_\_  
Mayor  
[INSERT NAME]

1406

Date: \_\_\_\_\_

1407 **APPROVED AS TO FORM:**  
1408 **CITY ATTORNEY**

1409 By: \_\_\_\_\_  
1410 [INSERT NAME]

## EXHIBIT A: ADDRESSES FOR NOTICES

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1411 [to come]

1412 Parties may change their representative following Notice to the other Party.

1413 **Acknowledgment:** City has submitted, and County has received, the attached address for giving  
1414 Notice under this Agreement on the later of the following dates:

- 1415       • the Effective Date, as evidenced by each of their signatures on this Agreement, or  
1416       • with respect to subsequent changes, the following date, as evidenced by their following  
1417       signatures :

1418       Date: \_\_\_\_\_

1419       County: \_\_\_\_\_

# EXHIBIT B: COMMUNICATIONS

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1420

## A. County Agreement Representative

Name	Mark Schleich Deputy Director of Public Works (Resource Recovery and Waste Management Division)
telephone number	805 882-3600
e-mail address	<a href="mailto:Schleich@cosbpw.net">Schleich@cosbpw.net</a>
mailing address	County of Santa Barbara Resource Recovery and Waste Management Division 130 East Victoria St., Suite 100 Santa Barbara, CA 93101
County office address	Same as mailing address

1421 County may change its representative following Notice to City.

1422 **Acknowledgment:** County has submitted, and City has received, the attached identification of  
1423 County Agreement Representative on the later of the following dates:

- 1424
- the Effective Date, as evidenced by each of their signatures on the Agreement, or
- 1425
- with respect to subsequent changes, the following date, as evidenced by their following
- 1426 signatures :

1427 Date: \_\_\_\_\_

1428 County: \_\_\_\_\_

1429 City: \_\_\_\_\_

# EXHIBIT B: COMMUNICATIONS

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1430 **B. City Agreement Representative**

Name	
Telephone number	
e-mail address	
Mailing address	
County office address	

1431 The City may change any of this information following Notice to County.

1432 **Acknowledgment:** The City named above has submitted, and the County has received, the attached  
1433 documentation on the later of the following dates:

- 1434 • the Effective Date, as evidenced each of their signatures on the Agreement, or
- 1435 • with respect to subsequent changes, the following date, as evidenced by their following  
1436 signatures :

1437 Date: \_\_\_\_\_

1438 City: \_\_\_\_\_

1439 County: \_\_\_\_\_

**EXHIBIT C:  
COLLECTION FRANCHISE OR OTHER PROOF OF  
DELIVERY OBLIGATION**

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1440 [to be attached to signed copy of this Agreement]

# EXHIBIT D: JURISDICTIONAL RATE STABILIZATION FUND DIVIDEND SAMPLE CALCULATION

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### Sample Dividend Calculation of Jurisdictional Rate Stability Fund

Assumptions: Surplus funds \$500,000

MSW eq MSW = 1  
 CSSR = 2  
 SSOW<sub>fw</sub> = 0.25

Actual Tonnage Received by TRRP	City A	City B	City C	City D	County	Total
MSW	400	150	50	50	350	1,000
CSSR	32	33	6	4	25	100
SSOW <sub>fw</sub>	15	2	-	-	3	20

Equivalent Tonnage Received	City A	City B	City C	City D	County	Total
MSW	400	150	50	50	350	1,000
CSSR	64	66	12	8	50	200
SSOW <sub>fw</sub>	4	1	-	-	1	5
<b>Total</b>	<b>468</b>	<b>217</b>	<b>62</b>	<b>58</b>	<b>401</b>	<b>1,205</b>

Dividend Calculation	City A	City B	City C	City D	County	Total
Percent	38.82%	17.97%	5.15%	4.81%	33.26%	100.00%
Amount	\$194,087	\$89,834	\$25,726	\$24,066	\$166,286	\$500,000

1441



# EXHIBIT E: EXAMPLE CALCULATION OF COUNTY SERVICE COSTS DUE FROM PROJECT PARTICIPANTS

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1442  
1443 The purpose of Exhibit E is to set forth a methodology to determine the actual revenues and expenses  
1444 incurred by the County for Solid Waste Management Services (Section 3.1) in connection with the Annual  
1445 Settlement Process.

1446  
1447 Each fiscal year the County will prepare a budget for the Solid Waste Management Services to be provided  
1448 to Public Participants by the County and will make it available for review by the City prior to approval by  
1449 the County Board of Supervisors. The budget will also include the estimate of overhead to be allocated  
1450 to County Service Costs for the fiscal year. The Board of Supervisors will consider the Department's budget  
1451 in June as part of their budget deliberations. Once approved, the County Service Cost will be included as  
1452 part of the Acceptable Material Charge.

1453  
1454 At the end of each fiscal year, the County will calculate the actual revenues and expenses incurred from  
1455 the completed fiscal year including the allocation of Department, Divisional and Operational Overhead for  
1456 County Service Costs. Closure, post-closure or regulatory fees will be excluded from the basis of  
1457 calculation of overhead for County Service Costs. Prior debt obligations and capital improvements as  
1458 shown on Exhibit F will not be part of this calculation as they are accounted for after calculating the Surplus  
1459 Fund.

1460  
1461 A review at the request of the City was performed by MSW Consultants to understand the process and  
1462 procedures used by the County for determining the final revenues and expenses attributable to the City  
1463 for the Solid Waste Management Services provided by the County. **The calculation below is an example  
1464 of the methodology used to determine the County Service Costs; however, the numbers provided in  
1465 this Exhibit E have not been verified by the County.** This process shall be as shown below.

1466  
1467 The County's Service Cost portion of the overall Solid Waste Management Services will be comprised of  
1468 the expenses incurred in, and properly allocated to, the four (4) programs in the Solid Waste Enterprise  
1469 Fund budget shown in Table 1.

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**Table 1 – County Budget Programs Attributable to County Service Cost**

Program Number	Name
1101	South Coast Transfer Station
1200	Tajiguas Landfill
1301	Santa Ynez Valley Transfer Station
1850	TRRP Contract Management

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1473 The County will only record expenses into these programs that are related to the County Service Costs.  
1474 For example, the County will not record any expenses related to greenwaste handling into any of these  
1475 programs, but segregate all greenwaste costs into a single program designated for greenwaste.

# EXHIBIT E: EXAMPLE CALCULATION OF COUNTY SERVICE COSTS DUE FROM PROJECT PARTICIPANTS

1476 Additionally, the County will record any recycling expenses that were previously booked into Program  
1477 1133 (Recycling Operations) into the program to which they are directly related (e.g., SCRTS, greenwaste,  
1478 etc.).

1479  
1480 The County will allocate its divisional administrative costs pursuant to the method shown further below.

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**Table 2 – Allocation of Divisional Administrative Costs**

Column:	A	B	C	D	E	F	G
Program	Costs Recorded in County's Financial System	Deduct Amounts for Programs to which Overhead is not Allocated	Amounts Upon Which Administrative Overhead is Allocated (1)	Administrative Overhead Allocation Percent (2)	Allocated Administrative Overhead (3)	Add Back Amounts from Programs to which Overhead is not Allocated (4)	Program Costs After Administrative Overhead Allocation (5)
1050 Administration	\$2,658,337	(\$2,658,337)	\$0	0.00%	\$0		\$0
1055 Ballard	0		0	0.00%	0		0
<b>1101 SCRTS</b>	<b>2,445,799</b>		<b>2,445,799</b>	<b>15.77%</b>	<b>419,220</b>		<b>2,865,019</b>
1122 Shop	817,655		817,655	5.27%	140,094		957,749
1133 Recycle	0		0	0.00%	0		0
TBD Greenwaste	960,634		960,634	6.19%	164,551		1,125,185
<b>1200 Tajiguas</b>	<b>2,852,227</b>		<b>2,852,227</b>	<b>18.39%</b>	<b>488,868</b>		<b>3,341,095</b>
<b>1301 SYVRTS</b>	<b>684,217</b>		<b>684,217</b>	<b>4.41%</b>	<b>117,233</b>		<b>801,450</b>
1401 New Cuyama	175,282		175,282	1.13%	30,039		205,321
1650 Operations OH	1,240,709		1,240,709	8.00%	212,667		1,453,376
1700 Closed Landfills	470,885	(470,885)	0	0.00%	0	470,885	470,885
1750 Engineering	0		0	0.00%	0		0
<b>1850 TRRP Contract Mgm</b>	<b>3,117,756</b>		<b>3,117,756</b>	<b>20.10%</b>	<b>534,326</b>		<b>3,652,082</b>
<b>(6) CPC and Reg. Fees</b>	<b>1,113,183</b>	<b>(1,113,183)</b>	<b>0</b>	<b>0.00%</b>	<b>0</b>	<b>1,113,183</b>	<b>1,113,183</b>
1950 CMM	\$3,217,470		\$3,217,470	20.74%	\$551,339		\$3,768,809
<b>Total</b>	<b>\$19,754,154</b>	<b>(\$4,242,405)</b>	<b>\$15,511,749</b>	<b>100.00%</b>	<b>\$2,658,337</b>	<b>\$1,584,068</b>	<b>\$19,754,154</b>

- (1) Column A plus column B.
- (2) Percentages based on amounts in column C.
- (3) Administrative overhead from Program 1100 allocated based on percentages in Column D.
- (4) Add back amounts from Column B.
- (5) Sum of Columns C, E and F.
- (6) Included in Program 1200; segregated for purposes of allocating Administration costs.

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# EXHIBIT E: EXAMPLE CALCULATION OF COUNTY SERVICE COSTS DUE FROM PROJECT PARTICIPANTS

1491 The County shall allocate its divisional shop and operational overhead pursuant to the method shown  
1492 below in Table 3.

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**Table 3 – Allocation of Divisional Shop and Operational Overhead**

Column:	A	B	C	D	E	F	G
Program	Program Costs After Administrative Overhead Allocation (1)	Deduct Amounts from Programs to Which Shop or Operational Overhead is not Allocated (2)	Amounts Upon Which Administrative Overhead is Allocated (3)	Shop and Operational Overhead Allocation Percent (4)	Allocated Shop and Operational Overhead Amounts (5)	Add Back Amounts on Which Shop and Operational Overhead is not Calculated (6)	Program Costs After Shop and Operational Overhead Allocation (7)
1050 Administration	\$0			0.00%	0		0
1055 Ballard	0			0.00%	0		0
<b>1101 SCRTS</b>	<b>2,865,019</b>		<b>2,865,019</b>	<b>34.36%</b>	<b>828,479</b>		<b>3,693,498</b>
1122 Shop	957,749	(957,749)	0	0.00%	0		0
1133 Recycle	0		0	0.00%	0		0
TBD Greenwaste	1,125,185		1,125,185	13.49%	325,370		1,450,555
<b>1200 Tajiguas</b>	<b>3,341,095</b>		<b>3,341,095</b>	<b>40.07%</b>	<b>966,147</b>		<b>4,307,242</b>
<b>1301 SYVRTS</b>	<b>801,450</b>		<b>801,450</b>	<b>9.61%</b>	<b>231,756</b>		<b>1,033,206</b>
1401 New Cuyama	205,321		205,321	2.46%	59,373		264,694
1650 Operations OH	1,453,376	(1,453,376)	0	0.00%	0		0
1700 Closed Landfills	470,885	(470,885)	0	0.00%	0	470,885	470,885
1750 Engineering	0	0	0	0.00%	0	0	0
<b>1850 TRRP Contract Mgm</b>	<b>3,652,082</b>	<b>(3,652,082)</b>	<b>0</b>	<b>0.00%</b>	<b>0</b>	<b>3,652,082</b>	<b>3,652,082</b>
<b>(8) CPC and Reg. Fees</b>	<b>1,113,183</b>	<b>(1,113,183)</b>	<b>0</b>	<b>0.00%</b>	<b>0</b>	<b>1,113,183</b>	<b>1,113,183</b>
1950 CMM	\$3,768,809	(\$3,768,809)	\$0	0.00%	0	3,768,809	3,768,809
<b>Total</b>	<b>\$19,754,154</b>	<b>(\$11,416,084)</b>	<b>\$8,338,070</b>	<b>100.00%</b>	<b>\$2,411,125</b>	<b>\$9,004,959</b>	<b>\$19,754,154</b>

- (1) From Column G of Table 2.
- (2) Exclude costs that do not drive Shop or Operational Overhead Costs.
- (3) Column A less Column B. Basis for allocation percentages in Column D.
- (4) Percent of total in Column C.
- (5) Sum of Program 1122 (Shop) and Program 1650 (Operational Overhead) allocated based on percentages in Column D.
- (6) Add back amounts in Column B other than Shop and Operational Overhead.
- (7) Sum of amounts in Columns C, E and F.
- (8) Included in Program 1200; segregated for purposes of allocating Shop and Operational Overhead costs.

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# EXHIBIT E: EXAMPLE CALCULATION OF COUNTY SERVICE COSTS DUE FROM PROJECT PARTICIPANTS

1507 After the previously described allocations have been made, the County's Service Cost will be the sum of  
1508 the programs shown below in Column C in Table 4.

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**Table 4 – Determination of County Service Cost**

Column:	A	B	C
Program	Program Costs After Shop and Operational Overhead Allocation (1)	Non-TRRP Related Costs (2)	County Service Cost (3)
1050 Administration	0		
1055 Ballard	0		
<b>1101 SCRTS</b>	<b>3,693,498</b>		<b>3,693,498</b>
1122 Shop	0		
1133 Recycle	0		
TBD Greenwaste	1,450,555	1,450,555	
<b>1200 Tajiguas</b>	<b>4,307,242</b>		<b>4,307,242</b>
<b>1301 SYVRTS</b>	<b>1,033,206</b>		<b>1,033,206</b>
1401 New Cuyama	264,694	264,694	
1650 Operations OH	0		
1700 Closed Landfills	470,885	470,885	
1750 Engineering	0	0	
<b>1850 TRRP Contract Mgmt.</b>	<b>3,652,082</b>		<b>3,652,082</b>
<b>(4) CPC and Reg. Fees</b>	<b>1,113,183</b>		<b>1,113,183</b>
1950 CMM	3,768,809	3,768,809	
<b>Total</b>	<b>\$19,754,154</b>	<b>\$5,954,943</b>	<b>\$13,799,210</b>

(1) From Column G of Table 3.

(2) Programs not related to the Project.

(3) Programs related to the Project.

1511 (4) Included in Program 1200.

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# EXHIBIT E: EXAMPLE CALCULATION OF COUNTY SERVICE COSTS DUE FROM PROJECT PARTICIPANTS

1515 An example of the Revenue from Other Users is shown below in in 5.

1516 **Table 5 – Revenue From Other Users**

Column:	A	B	C	D	E
Facility:	SCRTS	SVVTS	Tajiguas	Resource Recovery Facility	Total
<b>Annual Tons - Other Users</b>					
MarBorg Residuals			53,291		53,291
Self-haul	12,000	6,000			18,000
H2Handle	4,698	5,897			10,595
Divertable C&D	1,263	328			1,591
Metal	145	52			197
Direct to Tajiguas - Unsortable			3,126		3,126
C&D Dirt Tailings for ADC			15,000		15,000
<b>Total - Other Tons</b>	<b>18,106</b>	<b>12,277</b>	<b>71,417</b>	<b>0</b>	<b>101,800</b>
<b>Tip Fees - Other Users</b>					
MarBorg Residuals			\$95.00		
Self-haul	\$93.00	\$93.00	\$93.00	\$93.00	
H2Handle	\$118.00	\$118.00	\$118.00	\$118.00	
Divertable C&D	\$118.00	\$118.00	\$118.00	\$118.00	
Metal	\$10.00	\$10.00	\$10.00	\$10.00	
Direct to Tajiguas - Unsortable	\$118.00	\$118.00	\$118.00	\$118.00	
C&D Dirt Tailings for ADC	\$17.00	\$17.00	\$17.00	\$17.00	
<b>Annual Revenue - Other Users</b>					
MarBorg Residuals	0	0	5,062,645	0	5,062,645
Self-haul	1,116,000	558,000	0	0	1,674,000
H2Handle	554,364	695,846	0	0	1,250,210
Divertable C&D	149,034	38,704	0	0	187,738
Metal	1,450	520	0	0	1,970
Direct to Tajiguas - Unsortable	0	0	368,868	0	368,868
C&D Dirt Tailings for ADC	0	0	255,000	0	255,000
<b>Total - Revenue from Other Users</b>	<b>\$1,820,848</b>	<b>\$1,293,070</b>	<b>\$5,686,513</b>	<b>\$0</b>	<b>\$8,800,431</b>

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## EXHIBIT E: EXAMPLE CALCULATION OF COUNTY SERVICE COSTS DUE FROM PROJECT PARTICIPANTS

1518 An example summary of the amount due to the County for Solid Waste Management Services is shown  
1519 below in in Table 6.

1520 **Table 6 - Summary of Amount Due to the County for Solid Waste Management Services**

Description	Annual Amount	Disposal and Solid Waste System Costs per Ton
County Service Cost (from Table 4)	\$13,799,210	\$80.36
Debt Service related to 2017 COPs	\$5,113,732	
Payments to Service Contractor	\$2,888,786	
Debt Service for Subordinate Obligations	\$942,215	
Capital Purchases	\$1,637,000	
Total Project Expenditures	\$24,380,943	
Revenue from Other Users (from Table 5)	(\$8,800,431)	(\$51.25)
Revenue from CREB subsidies	(\$1,517,334)	
Less: Project Revenues (Other Than from Project Participants)	(\$10,317,765)	
Amount Due to the County	\$14,063,178	
Revenue to Achieve Debt Service Coverage	\$6,199,428	
Total Revenue from Public Participants	\$20,262,606	
Total Tons from Public Participants	171,717	
Total Disposal and Solid Waste System Costs		\$29.11

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# ATTACHMENT 1:

## PROJECTED AND MINIMUM ANNUAL DELIVERY REQUIREMENT

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**Table 2-1 (From Material Services Agreement):  
Projected Resource Recovery Project Tonnage**

Participating Agency	Mixed Waste (Tons)	Source Separated Recyclable Materials (Tons)	Source Separated Organic Materials (Tons)	Projected Annual Delivery TOTAL TONS
<b>Franchised Waste</b>				
County of Santa Barbara	40,474	9,536	400	50,410
Santa Barbara	59,224	16,073	0	75,297
Goleta	22,074	5,618	600	28,292
Solvang	3,632	0	0	3,632
Buellton	4,064	1,319	0	5,383
<i>Subtotal</i>	<i>126,361</i>	<i>32,546</i>	<i>4,107</i>	<i>163,014</i>
<b>Other Waste</b>				
Other Agency*	6,000	900	803	7,703
County Facility Self-Haul	20,000	0	0	20,000
<i>Subtotal</i>	<i>26,000</i>	<i>900</i>	<i>803</i>	<i>27,703</i>
<b>Total</b>	<b>152,361</b>	<b>33,446</b>	<b>4,910</b>	<b>190,717</b>

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\*UCSB, Chumash Reservation, State Parks

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