

**FRANCHISE AGREEMENT
FOR SOLID WASTE HANDLING
SERVICES**

**BETWEEN
CITY OF GOLETA
AND
MARBORG INDUSTRIES**



Effective Date: April 5, 2011; Resolution No. 11-21

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Santa Barbara County Ordinances as City Ordinances," which code and ordinances remain in effect except as expressly repealed or amended by City; and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 use only vehicles powered by Compressed Natural Gas (CNG), excluding "pup trucks" (smaller Solid Waste Collection vehicles) and flatbed vehicles. Excluded vehicles shall meet the California Air Resources Board's emission standards by December 31, 2013.

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 = $0.45785 \times 100 = 45.79\%$.

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.

Component	Weight
Service	67%
Disposal	33%
Total	100%

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 (20th) 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 20th of 2012 and each July 20th 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 XIII C and XIII D 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

Section 18.1 Protection of Public Health, Safety or Welfare.

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.

Section 18.2 Contractor's Disaster Assistance.

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.

Number of Years Remaining in the Term of Agreement	Amount of Assignment Fee
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.

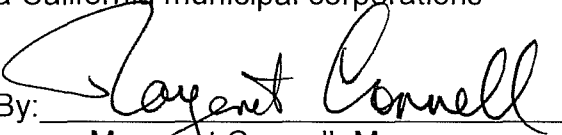
This Agreement constitutes the entire Agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.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

(Intentionally Left Blank)

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

CITY:

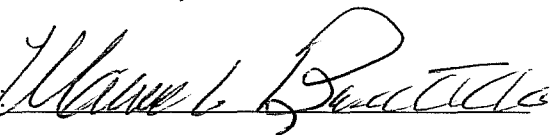
City of Goleta,
a California municipal corporations

By: 
Margaret Connell, Mayor

Date: 4/7/11

CONTRACTOR:


Marborg Industries,
a California corporation

By: 

Date: 4/5/2011

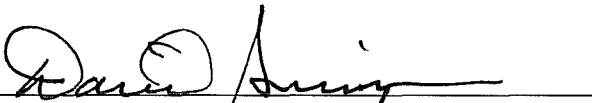
ATTEST:


Deborah Constantino, City Clerk

By: 

Date: 4/5/2011

APPROVED AS TO ADMINISTRATION:


Daniel Singer, City Manager

APPROVED AS TO FORM:


Tim W. Giles, City Attorney

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 5.

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 1st and ending June 30th 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.

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

Cart Services						
Service Description	Monthly Rate					
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					
Additional Cart Services						
Service Description	Rate					
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					
Bin Services						
Service Description	Monthly Rate					
	Number Of Collections Per Week					
	1	2	3	4	5	6
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.						
Service Description	Rate					
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					
Additional Bin Services						
Service Description	Rate					
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					
- continued on following page -						

Additional Bin Services (cont.)	
Service Description	Rate
Steam clean bin:	
1x per fiscal year (each bin)	No Charge
2x or more per fiscal year (each bin)	\$42.00
Additional SFD Collection Services	
Service Description	Rate
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**

Cart Services						
Service Description	Monthly Rate					
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					
Additional Cart Services						
Service Description	Rate					
Go-back service (each occurrence)	\$10.00					
Bin Services						
Service Description	Monthly Rate					
	Number Of Collections Per Week					
	1	2	3	4	5	6
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.						
Service Description	Rate					
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					
Additional Bin Services						
Service Description	Rate					
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					
<i>- continued on following page -</i>						

Additional Bin Services (cont.)	
Service Description	Rate
Steam clean bin:	
1x per fiscal year (each bin)	No Charge
2x or more per fiscal year (each bin)	\$42.00
Additional MFD Collection Services	
Service Description	Rate
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**

Cart Services							
Service Description	Monthly Rate						
32 gallon solid waste cart (weekly collection)	<table border="1"> <tr><td>\$25.00</td></tr> </table>						\$25.00
\$25.00							
64 gallon solid waste cart (weekly collection)	<table border="1"> <tr><td>\$29.00</td></tr> </table>						\$29.00
\$29.00							
96 gallon solid waste cart (weekly collection)	<table border="1"> <tr><td>\$34.00</td></tr> </table>						\$34.00
\$34.00							
96 gallon recyclables cart (weekly collection)	<table border="1"> <tr><td>\$13.50</td></tr> </table>						\$13.50
\$13.50							
Each additional 32, 64 or 96 gallon solid waste cart	<table border="1"> <tr><td>\$7.00</td></tr> </table>						\$7.00
\$7.00							
Each additional 96 gallon recyclables cart (32 or 64 gallon upon request)	<table border="1"> <tr><td>No Charge</td></tr> </table>						No Charge
No Charge							
Additional Cart Services							
Service Description	Rate						
Padlock rental	<table border="1"> <tr><td>\$13.00 /month</td></tr> </table>						\$13.00 /month
\$13.00 /month							
Padlock installation (each cart)	<table border="1"> <tr><td>\$27.00</td></tr> </table>						\$27.00
\$27.00							
Go-back service (each occurrence)	<table border="1"> <tr><td>\$10.00</td></tr> </table>						\$10.00
\$10.00							
Bin Services							
Service Description	Monthly Rate						
	Number Of Collections Per Week						
	1	2	3	4	5	6	
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	
Service Description	Rate						
Additional bin collection:							
1.5 cubic yard solid waste or recyclables bin	<table border="1"> <tr><td>\$33.84</td></tr> </table>						\$33.84
\$33.84							
2 cubic yard solid waste or recyclables bin	<table border="1"> <tr><td>\$44.03</td></tr> </table>						\$44.03
\$44.03							
3 cubic yard solid waste or recyclables bin	<table border="1"> <tr><td>\$62.50</td></tr> </table>						\$62.50
\$62.50							
4 cubic yard solid waste or recyclables bin	<table border="1"> <tr><td>\$81.44</td></tr> </table>						\$81.44
\$81.44							
Additional Bin Services							
Service Description	Rate						
Padlock rental	<table border="1"> <tr><td>\$13.00 /month</td></tr> </table>						\$13.00 /month
\$13.00 /month							
Padlock installation (each bin)	<table border="1"> <tr><td>\$35.00</td></tr> </table>						\$35.00
\$35.00							
Bar lock installation (each bin)	<table border="1"> <tr><td>\$80.00</td></tr> </table>						\$80.00
\$80.00							
Overloaded bin collection (each bin)	<table border="1"> <tr><td>\$15.00</td></tr> </table>						\$15.00
\$15.00							
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Additional Bin Services (cont.)	
Service Description	Rate
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
Roll-Off Services	
Service Description	Rate
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
Additional Roll-Off Services	
Service Description	Rate
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

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

EXHIBIT D

CITY FACILITIES PREMISES

Public Facilities				
Facility	Location	Service	Quantity	Weekly Service
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
Parks & Open Spaces				
Park/Open Space	Location	Service	Quantity	Weekly Service
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 – Kragen 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

City-Sponsored Event	Approximate Date
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

Facility	Location
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
Service Component Adjustment Factor	= (224.6–221.4) / 221.4 X 100 = 1.4%

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
Disposal Component Adjustment Factor	= (79.20–72) / 72 X 100 = 10.0%

Table 3 – Calculation of Rate Adjustment %

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

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 th of the month)	\$ _____
Total Fees and Penalty	\$ _____

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



Agreement No. 2011-023.1
City of Goleta, California

AMENDMENT No. 1
FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES
BETWEEN THE CITY OF GOLETA
AND
MARBORG INDUSTRIES

This Amendment No. 1 is made this 5th day of September, 2017 to the Franchise Agreement for Solid Waste Handling Services between the **City of Goleta**, (City) and **MarBorg Industries**, (Contractor) dated April 5, 2011 ("Agreement" No. 2011-023).

RECITALS

WHEREAS, the City of Goleta entered into the Agreement with MarBorg Industries for the purpose of providing solid waste, recycling and organics collection services to residents and businesses within the City; and

WHEREAS, the Agreement provides a method for calculating solid waste customer rates, and annual adjustments to the solid waste customer rates; and

WHEREAS, in Section 12.2 of the Agreement the specified method for calculating solid waste customer rates provides for annual increases that reflect changes to the Consumer Price Index and changes in the tipping fees charged by the County of Santa Barbara for refuse; and

WHEREAS, the specified method does not provide for changes to the tipping fees charged by the County for recyclables or organics to be accounted for in calculating solid waste customer rates; and

WHEREAS, on July 1, 2016, the County increased the recyclables tipping fee by \$25.00 from \$5.00/ton to \$30.00/ton; and

WHEREAS, on July 1, 2017 the County increased the recyclables tipping fee by \$69.00 from \$30.00/ton to \$99/ton; and

WHEREAS, the parties desire to amend the Agreement in order for the specified method to account for the recyclables and organics tipping fees and allow the Contractor to calculate and charge solid waste customer rates that reflect the increase in tipping fees; and

WHEREAS, the City Council, on this 5th day of September, 2017, approved this Amendment No. 1 and authorized the City Manager to execute this Amendment No. 1.

AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. Exhibit A as referenced in Section 1.1 is amended to add the following definitions:

A-105 Carryforward Amount

“Carryforward Amount” means the difference between the Projected Material Tipping Fee Cost used in the previous year’s rate adjustment and the Current Fiscal Year’s Material Tipping Fee Cost. This amount may be positive or negative.

A-106 Current Fiscal Year’s Material Tipping Fee Cost

“Current Fiscal Year’s Material Tipping Fee Cost” means the Material Tipping Fee Cost calculated based on the actual amount of tons of Refuse, Recyclables and Organics collected by Contactor for the twelve months ended March 31st of the Current Fiscal Year, and multiplied by the average tipping fee charged, or expected to be charged, for each corresponding type of material collected during the Current Fiscal Year.

A-107 Current Fiscal Year’s Recurring Rate Revenue

“Current Fiscal Year’s Recurring Rate Revenue” means the Contractor’s actual Recurring Rate Revenue for the nine (9) months ended March 31st of the Current Fiscal Year divided by nine (9) and then multiplied by twelve (12) to arrive at an annualized amount of Recurring Rate Revenue for the Current Fiscal Year at the Maximum Rates that became effective the previous July 1st.

A-108 Material Tipping Fee Component

“Material Tipping Fee Component” means the portion of Recurring Rate Revenue intended to reimburse Contractor for its Material Tipping Fee Cost.

A-109 Material Tipping Fee Cost

“Material Tipping Fee Cost” means the cost incurred by Contractor to deliver Refuse, Recyclables, and Organics to any Disposal Site or Material Recovery Facility. The Material Tipping Fee Cost is the grand total of the products of the tipping fee charged by each facility, multiplied by the corresponding amount of tons of material delivered to each facility.

A-110 Organics

“Organics” means food waste, Green Waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food waste.

A-111 Projected Fiscal Year’s Material Tipping Fee Cost

“Projected Fiscal Year’s Material Tipping Fee Cost” means the Material Tipping Fee Cost for the upcoming Fiscal Year based on the projected amount of tons of each material type and the projected tipping fees.

A-112 Recurring Rate Revenue

“Recurring Rate Revenue” means Contractor’s recurring revenue for Residential Collection Service and Commercial Collection Service in which Material Tipping Fee

Costs are embedded in the rates. This excludes revenue for Rolloff Collection Service in which Material Tipping Fee Costs are charged separately. Recurring Rate Revenue may be expressed as either 'net' (excluding Franchise Monthly Fees) or 'gross' (including Franchise Monthly Fees).

A-113 Service Component

"Service Component" means the portion of Recurring Rate Revenue used to apply the CPI adjustment to Contractor's rates.

2. Section **12.1 Maximum Rates** is deleted and replaced with the following;

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 shall consist of a Service Component, a Material Tipping Fee Component, and the Franchise Monthly Fees. 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.

3. Sections **12.2.1, 12.2.2, 12.2.3 and 12.2.4** of the Agreement are deleted in their entirety.

4. The following is added as **Section 12.2.1 Calculation of Rate Adjustment**

- 1) From October 6, 2017 through June 30, 2018, Contractor's current Maximum Rates that became effective on July 1, 2016 shall be increased by 17.76 percent. Of the 17.76 percent increase, (a) 2.71 percent consists of a CPI adjustment to the service component, (b) 8.24 percent consists of an increase in Contractor's Material Tipping fee component due to increases to refuse and recyclables tipping fees that went into effect on July 1, 2017, (c) 0.89 percent consists of the increases to recyclable tipping fee costs that went into effect on July 1, 2016, and (d) 5.92 percent consists of compressing the FY 17/18 customer rates into 8 months, instead of 12 months. The 0.89 percent component is a one-time increase, totaling \$59,367.02 (or \$67,084.73 including Franchise Monthly Fees) which compensates the Contractor for the increase in recyclables tipping fees that were not captured in the FY 16/17 rates that were charged to customers. The 5.92 percent component is a one-time increasing due to the FY 17/18 customer rates being compressed into an 8-month period. The supporting calculations for the 17.76 percent increase are included in Exhibit G-1 to this Amendment No. 1, and shall be effective October 6, 2017.

2) Effective only on July 1, 2018, the (1) one-time 0.89 percent increase and (2) the one-time 5.92 percent increase as referenced in Section 12.2.1(1) will no longer be applicable, and shall be removed from the FY 17/18 collection rates when calculating the FY 18/19 collection rates.

3) Effective July 1, 2019, and each July 1st thereafter for the remainder of the term of the Agreement, Contractor may adjust the previous fiscal year's Maximum Rates according to the methodology described in in this Amendment No. 1, and shown by example in the attached Exhibit G-1. Contractor shall be responsible for determining the amount of the adjustments to the Maximum Rates pursuant to the methodology. 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 the City.

4) Contractor's Recurring Rate Revenue shall be organized into a Service Component and a Material Tipping Fee Component. The intent of this method is to:

a) Reimburse Contractor for its actual Material Tipping Fee Cost by including an amount in its Recurring Rate Revenue that reflects its Projected Material Tipping Fee Cost, and accounts for the difference between its previous Projected Material Tipping Fee Costs and its Current Fiscal Year's Material Tipping Fee Cost.

b) Adjust the Service Component of Contractor's revenue based on the change in the Consumer Price Index.

5) The Maximum Rates shall be adjusted based on a rate adjustment percentage. The rate adjustment percentage shall be based on the projected change in Contractor's Recurring Rate Revenue. Contractor's projected Recurring Rate Revenue shall be comprised of two Components: a Service Component and a Material Tipping Fee Component. Both of these components shall be independently calculated and then combined to derive the overall projected Recurring Rate Revenue. The percent change between the projected Recurring Rate Revenue for the upcoming Fiscal Year and the current Fiscal Year's Recurring Rate Revenue shall be the rate adjustment percent.

6) The Maximum Rates for 'per day' and 'per load' charges for Roll-off Collection Service shall continue to be adjusted based on the change in the Consumer Price Index.

5. The following is added as **Section 12.2.2 Material Tipping Fee Component**


1) The projected Material Tipping Fee Component of Recurring Rate Revenue shall be calculated based on the following steps:

a) Determine the Projected Fiscal Year's Material Tipping Fee Cost.

- b) Calculate the Carryforward Amount.
 - c) Combine the Projected Fiscal Year's Material Tipping Fee Cost with the Carryforward Amount. The result is the projected Material Tipping Fee Component of Recurring Rate Revenue for the upcoming Fiscal Year.
6. The following is added as **Section 12.2.3 Service Component**
- 1) The projected Service Component of Recurring Rate Revenue shall be calculated based on the following steps:
 - a) Determine the Current Fiscal Year Service Component by subtracting the Current Fiscal Year's Material Tipping Fee from the Current Fiscal Year's Recurring Rate Revenue.
 - b) Multiply the Current Fiscal Year Service Component by one plus the annual change in the Consumer Price Index. The result is the projected Service Component of Recurring Rate Revenue for the upcoming Fiscal Year.
7. The following is added as **Section 12.2.4 Adjustment of Maximum Rates**
- 1) The calculation of the adjustment percent applied to the Maximum Rates shall be calculated based on the following steps:
 - a) Combine the projected Service Component and projected Material Tipping Fee Component of Recurring Rate Revenue to determine the projected total Recurring Rate Revenue for the upcoming Fiscal Year.
 - b) The Recurring Rate Revenue shall be calculated both on a 'net' and 'gross' basis (i.e., both excluding and including Franchise Monthly Fees).
 - c) Calculate the percent change between the projected Recurring Rate Revenue for the upcoming Fiscal Year and the Current Fiscal Year Recurring Rate Revenue. The percent change shall be the same for Recurring Rate Revenue expressed on a 'net' and 'gross' basis. This percent change shall be the adjustment percent applied to Maximum Rates.
8. Exhibit G Rate Setting Example, is repealed and replaced with Exhibit G-1 Rate Setting Example, attached hereto.
9. Except as otherwise specifically provided herein, all other provisions of Agreement No. 2011-023 shall remain in full force and effect

In concurrence and witness whereof, this Amendment No. 1 has been executed by the parties effective on the date and year first written above.


CITY OF GOLETA


Michelle Greene, City Manager

CONTRACTOR


Mario Borgatello, President
MarBorg Industries
A California Corporation

ATTEST:


Deborah Lopez, City Clerk

APPROVED AS TO FORM


Winnie Cai, Deputy City Attorney

EXHIBIT G RATE ADJUSTMENT EXAMPLE

Exhibit 1 - Calculation of Rate Adjustment Percent Effective October 6, 2017

Table 1 - Current Actual Material Tipping Fee Cost

Description	Residential			Commercial and Multi-unit			Total
	Refuse	Recyclables	Organics	Refuse	Recyclables	Organics	
Tons	5,110.07	2,374.68	3,198.27	13,095.45	3,642.19	215.36	27,636.02
Tip Fee	\$87.00	\$5.00	\$45.00	\$87.00	\$13.00	\$45.00	
Total Cost	\$444,576.09	\$11,873.40	\$143,922.15	\$1,139,304.15	\$47,348.47	\$9,691.20	\$1,796,715.46

Table 2 - Projected Material Tipping Fee Cost

Description	Residential			Commercial and Multi-unit			Total
	Refuse	Recyclables	Organics	Refuse	Recyclables	Organics	
Tons	5,110.07	2,374.68	3,198.27	13,095.45	3,642.19	215.36	27,636.02
Tip Fee	\$99.00	\$99.00	\$45.00	\$99.00	\$56.00	\$45.00	
Total Cost	\$505,896.93	\$235,093.32	\$143,922.15	\$1,296,449.55	\$203,962.64	\$9,691.20	\$2,395,015.79

Table 3 - Breakdown of Rate Base and Rate Adjustment Percent

Description	Current Rate Revenue	Projected Rate Revenue	Amount of Adjustment	Adjustment Percent
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Net Billing (Excluding City Fees)

Service Cost Component	\$4,874,064.15	\$5,006,151.29	\$132,087.14	2.71%
Material Tip Fee Cost Component	\$1,796,715.46	\$2,395,015.79	\$598,300.33	33.30%
Subtotal Net of City Fees	\$6,670,779.61	\$7,401,167.08	\$730,387.47	10.95%
One-time Adjustment		\$59,367.02	\$59,367.02	0.89%
Total After One-time Adjustment	\$6,670,779.61	\$7,460,534.10	\$789,754.49	11.84%

Gross Billing (Including City Fees)

Service Cost Component	\$5,507,692.49	\$5,656,950.96	\$149,258.47	2.71%
Material Tip Fee Cost Component	\$2,030,288.47	\$2,706,367.84	\$676,079.37	33.30%
Subtotal Including of City Fees	\$7,537,980.96	\$8,363,318.80	\$825,337.84	10.95%
One-time Adjustment		\$67,084.73	\$67,084.73	0.89%
Total After One-time Adjustment	\$7,537,980.96	\$8,430,403.53	\$892,422.57	11.84%
Adjustment over 8 months	\$5,025,320.64		\$892,422.57	17.76%

Exhibit 2 - Example Rate Adjustment Method

Table 2.1 - Projected Fiscal Year's Material Tipping Fee Cost Used in Previous Year's Rate Adjustment Calculation (excludes any Carryforward amount)

Description	Residential			Commercial and Multi-unit			Total
	Refuse	Recyclables	Organics	Refuse	Recyclables	Organics	
Tons	5,110.07	2,374.68	3,198.27	13,095.45	3,642.19	215.36	27,636.02
Tip Fee	\$99.00	\$99.00	\$45.00	\$99.00	\$56.00	\$45.00	
Total Cost	\$505,896.93	\$235,093.32	\$143,922.15	\$1,296,449.55	\$203,962.64	\$9,691.20	\$2,395,015.79

Table 2.2 - Current Year's Material Tipping Fee Cost (Based on Actual Tons for 12 Months Ended March 31st and Tip Fees Actually Incurred)

Description	Residential			Commercial and Multi-unit			Total
	Refuse	Recyclables	Organics	Refuse	Recyclables	Organics	
Tons	5,468.00	2,541.00	3,422.00	14,012.00	3,897.00	230.00	29,570.00
Tip Fee	\$99.00	\$99.00	\$45.00	\$99.00	\$56.00	\$45.00	
Total Cost	\$541,332.00	\$251,559.00	\$153,990.00	\$1,387,188.00	\$218,232.00	\$10,350.00	\$2,562,651.00

Carryforward Amount (Difference Between Total Cost in Tables 2.1 and 2.2)

\$167,635.21

Table 2.3 - Projected Fiscal Year's Material Tipping Fee Cost

Description	Residential			Commercial and Multi-unit			Total
	Refuse	Recyclables	Organics	Refuse	Recyclables	Organics	
Tons	5,700.00	2,700.00	3,600.00	14,700.00	4,100.00	200.00	31,000.00
Tip Fee	\$109.00	\$109.00	\$45.00	\$109.00	\$109.00	\$45.00	
Total Cost	\$621,300.00	\$294,300.00	\$162,000.00	\$1,602,300.00	\$446,900.00	\$9,000.00	\$3,135,800.00

Table 2.4 - Breakdown of Recurring Rate Revenue and Rate Adjustment Percent

Description	Current Recurring Rate Revenue	Projected Recurring Rate Revenue	Amount of Adjustment	Adjustment Percent
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Net Recurring Rate Revenue (Excluding Franchise Monthly Fees)

Service Component	\$5,006,151.29	\$5,156,335.83	\$150,184.54	3.00%
Material Tip Fee Component	\$2,395,015.79	\$3,135,800.00	\$740,784.21	30.93%
Carryforward Amount		\$167,635.21	\$167,635.21	
Total	\$7,401,167.08	\$8,459,771.04	\$1,058,603.96	14.30%

Franchise Monthly Fees

Service Component	\$650,799.67	\$670,323.66	\$19,523.99	3.00%
Material Tip Fee Component	\$311,352.05	\$407,654.00	\$96,301.95	30.93%
Carryforward Amount		\$21,792.58	\$21,792.58	
Total	\$962,151.72	\$1,099,770.23	\$137,618.51	14.30%

Gross Recurring Rate Revenue (Including Franchise Monthly Fees)

Service Component	\$5,656,950.96	\$5,826,659.49	\$169,708.53	3.00%
Material Tip Fee Component	\$2,706,367.84	\$3,543,454.00	\$837,086.16	30.93%
Carryforward Amount		\$189,427.79	\$189,427.79	
Total	\$8,363,318.80	\$9,370,113.49	\$1,006,794.69	12.04%

**AMENDMENT NO. 2
FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES
BETWEEN THE CITY OF GOLETA
AND
MARBORG INDUSTRIES**

This **Amendment No. 2** is made on this 17th day of July, 2018 to the Franchise Agreement for Solid Waste Handling Services between the **City of Goleta**, ("City") and **MarBorg Industries**, (Contractor) dated April 5, 2011 ("Agreement," Agreement No. 2011-023).

RECITALS

WHEREAS, Agreement No. 2011-023 was originally entered into to provide the City with professional solid waste, recycling and greenwaste collection services to residents and businesses within the City; and

WHEREAS, the Agreement provides for an initial Term of 8 years, ending on June 30, 2019, with an option to extend the Term by up to two years, at City's sole discretion, and provided that the Contractor has met certain performance requirements; and

WHEREAS, on May 4, 2017 the Contractor submitted a written request for an extension of the term of up to two years; and

WHEREAS, on August 15, 2017 the City Council approved a 2-year extension of the Agreement for a new termination date of June 30, 2021; and

WHEREAS, at the August 15, 2017 hearing, the City Council also directed Public Works staff to analyze what would be required in order to provide for an additional 10-year extension to the Agreement, and to return with findings within a 12 month period; and

WHEREAS, on March 15, 2018 the Contractor submitted a proposal to the City for a 10-year extension to the Agreement beyond the termination date of June 30, 2021 for a new termination date of June 30, 2031, including substantial reductions in solid waste collection rates, additional services, and enhancements to existing services under the Agreement; and

WHEREAS, on March 22, 2018, upon staff's presentation of MarBorg's proposal the Solid Waste Issues Committee directed Public Works staff to bring Contractor's proposal to the full Council at the June 5, 2018 City Council meeting; and

WHEREAS, at the June 5, 2018 meeting, the City Council accepted Contractor's proposal, and directed staff to incorporate the terms of the proposal into the Agreement; and

WHEREAS, the City Council approved this Amendment No. 2 on this 17th day of July, 2018.

AMENDED TERMS

Now therefore City and Consultant agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 4.4 Term of the Agreement** is replaced in its entirety to read as follows:

The Term of this Agreement shall begin on the Services Initiation Date and shall end at midnight on June 30, 2031, unless this Agreement is terminated sooner pursuant to Article 19.

2. **Section 5.19 Community Cleanup Projects** is replaced in its entirety to read as follows:

Contractor shall provide Solid Waste Collection service for up to twelve (12) community cleanup projects per Fiscal Year. A community cleanup project shall consist of City employees and/or volunteers working to pick up 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.

3. **Section 5.20 Abandoned Items** is replaced in its entirety to read as follows:

Upon request by the Director, Contractor shall Collect no more than eighty (80) times per Fiscal Year up to a Fiscal Year total of twenty (20) 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.

4. The following is added as **Section 5.9.7 Backyard Composting Containers**:

Contractor shall provide free backyard composting containers to Residential Customers. Upon request from a Residential Customer, Contractor shall deliver, at no charge, a backyard composting container. Customers may receive a maximum of two (2) free backyard composting containers.

5. **Section 8.1 Diversion Requirements** is replaced in its entirety to read as follows:

Contractor shall maintain a minimum combined commercial and residential franchise Diversion percentage of 41.5% for the Term of this Agreement. The Diversion percentage shall be calculated on a Fiscal Year basis. In the event that new residential curbside diversion programs, such as food waste collection, become necessary in order to comply with State mandates, Contractor shall make every reasonable effort to maximize the franchise Diversion percentage accordingly. City and Contractor shall meet and confer to determine whether the Diversion percentage should be adjusted, and by how much, to account for new collection programs.

In the event of a decline in Market conditions or other uncontrollable circumstance that adversely affects the sales or recovery of recyclables the Contractor may propose a change to the Diversion Requirement that reflects the current operating conditions. City shall have discretion to approve the change in Diversion Requirements and such approval shall not be unreasonably withheld.

6. **Section 8.2.3 Penalty for Failure to Satisfy Diversion Percentage Goals** is replaced in its entirety to read as follows:

In the event that Contractor fails to meet the annual Diversion percentage goal, Contractor shall submit payment of a penalty within sixty (60) Days of the end of the Fiscal Year. The penalty shall be calculated on the basis of the Disposal fee charged for refuse during the FY for which the Diversion percentage goal was not achieved, multiplied by the number of undiverted tons from that Fiscal Year.

For example:

- a. If the Disposal Fee = \$50 per Ton; and
- b. If the Actual FY Tonnage Diverted = 4,078.5 Tons; and
- c. If the FY Required Diverted Tonnage to maintain a minimum of 41.5% = 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.

7. **Section 12.4.1 Annual Base Fee and Francisee Monthly Fees** is replaced in its entirety to read as follows:

Contractor shall submit to City payment of one hundred thousand dollars (\$100,000) within the first quarter of each Fiscal Year for the Term of this Agreement.

8. **Section 16.3 Proposition 218 Indemnification** is deleted.

9. The second paragraph of **Article 18 EMERGENCY SERVICE** is replaced in its entirety to read as follows:

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.

10. **Section 22.1.3 Transfer Approved; Payment of Transfer Fee** is replaced in its entirety to read as follows:

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. 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.

Number of Years Remaining in the Term of Agreement	Amount of Assignment Fee
More than 10	\$500,000.00
Between 9 and 10	\$480,000.00
Between 8 and 9	\$460,000.00
Between 7 and 8	\$440,000.00
Between 6 and 7	\$420,000.00
Between 5 and 6	\$400,000.00
Between 4 and 5	\$380,000.00
Between 3 and 4	\$360,000.00
Between 2 and 3	\$340,000.00
Between 1 and 2	\$320,000.00
Less than one year	\$300,000.00

11. **Section 23.8 Notices** is replaced in its entirety to read as follows:

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 Public Works
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. Brian Borgatello
Marborg Industries
728 Yanonali
Santa Barbara, CA 93103

Copy to: Richard C. Monk
Hollister & Brace
1126 Santa Barbara Street
Santa Barbara, CA 93102

12. **Exhibit B Maximum Rate Schedules** is replaced in its entirety with the attached Exhibit B-1 FY 2018-19 Solid Waste Rate Schedule.

In concurrence and witness whereof, this Amendment No. 2 has been executed by the parties effective on the date and year first above written

CITY OF GOLETA



Michelle Greene, City Manager

CONTRACTOR

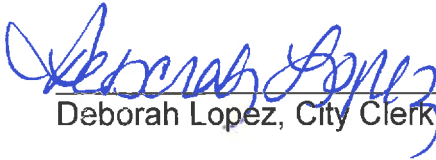


Brian Borgatello, President

ATTEST:



Kathleen Borgatello-Koepfer, Secretary,



Deborah Lopez, City Clerk

APPROVED AS TO FORM



Winnie Cai, Deputy City Attorney

**AMENDMENT NO. 3
FRANCHISE AGREEMENT FOR SOLID WASTE HANDLING SERVICES
BETWEEN THE CITY OF GOLETA
AND
MARBORG INDUSTRIES**

This **Amendment No. 3** is made on this 2nd day of June, 2021 to the Franchise Agreement for Solid Waste Handling Services between the **City of Goleta**, ("City") and **MarBorg Industries**, (Contractor) dated April 5, 2011 ("Agreement" No. 2011-023).

RECITALS

WHEREAS, Agreement No. 2011-023 was originally entered into to provide the City with professional solid waste, recycling and greenwaste collection services to residents and businesses within the City; and

WHEREAS, the Agreement provides for an initial Term of 8 years, ending on June 30, 2019, with an option to extend the Term by up to two years, at City's sole discretion, and provided that the Contractor has met certain performance requirements; and

WHEREAS, on May 4, 2017 the Contractor submitted a written request for an extension of the term of up to two years; and

WHEREAS, on August 15, 2017 the City Council approved a 2-year extension of the Agreement for a new termination date of June 30, 2021; and

WHEREAS, at the August 15, 2017 hearing, the City Council also directed Public Works staff to analyze what would be required in order to provide for an additional 10-year extension to the Agreement, and to return with findings within a 12 month period; and

WHEREAS, on March 15, 2018 the Contractor submitted a proposal to the City for a 10-year extension to the Agreement beyond the termination date of June 30, 2021 for a new termination date of June 30, 2031, including substantial reductions in solid waste collection rates, additional services, and enhancements to existing services under the Agreement; and

WHEREAS, on March 22, 2018, upon staff's presentation of MarBorg's proposal the Solid Waste Issues Committee directed Public Works staff to bring Contractor's proposal to the full Council at the June 5, 2018 City Council meeting; and

WHEREAS, at the June 5, 2018 meeting, the City Council accepted Contractor's proposal, and directed staff to incorporate the terms of the proposal into the Agreement; and

WHEREAS, the City Council approved Amendment No. 2 on July 17, 2018.

WHEREAS, on June 1, 2021, upon the approval of the 2021/2022 rates increase at the Proposition 218 protest hearing, the Franchise Agreement requires amending to increase the City Program Fee by 4%, requiring Amendment 3 as follows;

AMENDED TERMS

Now therefore City and Contractor agree as follows that the Agreement be, and hereby is, amended as follows:

1. **Section 12.4.2. Calculation of Franchise Monthly Fees** is replaced in its entirety to read as follows:

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 as determined in Exhibit A: Definitions. 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 1.17 (Net Billing); and
- d. Multiply the Net Billing by 0.05 (Franchise Fee); and
- e. Multiply the Net Billing by 0.12 (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 / 1.17 = \$222,222.22; and
- e. Then Franchise Fee = \$222,222.22 X 0.05 = \$11,111.11; and
- f. Then SW & ES Programs Fee = \$222,222.22 X 0.12 = \$26,666.66; and
- g. Then Franchisee Monthly Fees = \$11,111.11 + \$26,666.66 = \$37,777.77.

2. **Exhibit A: Definitions.** The following definitions are replaced in their entirety to read as follows:

A-45 Franchise Fee.

“Franchise Fee” means and consists of five percent (5%) out of the seventeen percent (17%) 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 seventeen percent (17%) of the net billings as set forth in Section 12.4.

A-92 Solid Waste and Environmental Services Program Fee.

“Solid Waste and Environmental Services Program Fee” means and consists of twelve percent (12%) out of the seventeen percent (17%) Franchisee Monthly Fees.

In concurrence and witness whereof, this Amendment No.3 has been executed by the parties effective on the date and year first above written

CITY OF GOLETA

DocuSigned by:
Michelle Greene
DE7CE466308944A...
Michelle Greene, City Manager

CONTRACTOR

DocuSigned by:
Brian Borgatello, Marborg President
BD83FC9DE8F94C0...
Brian Borgatello, President

ATTEST:

DocuSigned by:
Deborah Lopez
A3E09F3473CA47E...
Deborah Lopez, City Clerk

DocuSigned by:
Kathleen Borgatello Koeper
45BBD4AC7FD4492...
Kathleen Borgatello-Koeper, Secretary,

APPROVED AS TO FORM

DocuSigned by:
Winnie Cai
A1BF8F896161498...
Winnie Cai, Deputy City Attorney



**Agenda Item B.1
PUBLIC HEARING
Meeting Date: June 1, 2021**

TO: Mayor and Councilmembers

FROM: Charles W. Ebeling, Public Works Director

CONTACT: Melissa Nelson, Environmental Services Coordinator
Kimberly Nilsson, Solid Waste Solutions, Inc.

SUBJECT: Proposition 218: Protest Hearing for Proposed Solid Waste Rate Increase

RECOMMENDATIONS:

- A. Conduct a public hearing to accept both written and verbal protests against the increased solid waste fees, track the number of protests and, if the number of written protests received is not sufficient to constitute a majority, make a finding that there is not a majority protest by property owners within the assessment area;
- B. Approve Resolution No. 21-__ “A Resolution of the City Council of the City of Goleta, California, Increasing Solid Waste Maximum Rates.”; and
- C. Approve Amendment No. 3 for the Franchise Agreement for Solid Waste Handling Services with MarBorg Industries and authorizing the collection of the additional City of Goleta 4% environmental services program fee.

BACKGROUND:

On April 5, 2011, the City of Goleta (City) approved Franchise Agreement 2011-023 (Agreement) with MarBorg Industries (MarBorg) to provide city-wide residential and commercial solid waste collection services, effective from July 1, 2011 until June 30, 2019. On August 15, 2017, the City Council approved a two-year extension, until June 30, 2021, that was requested by MarBorg under an option to extend.

On September 5, 2017, the City Council approved Amendment No. 1 to the Franchise Agreement between the City and MarBorg Industries to reflect an adjustment to Fiscal Year (FY) 2017/18 Solid Waste Collection Rates. On July 17, 2018, the City Council approved Amendment No. 2 to, among other things, enhance collection services, reduce solid waste collection rates, and extend the franchise term by 10 years, through June 30, 2031. On May 19, 2020, after Proposition 218 noticing, the City Council approved a rate increase for MarBorg under the terms of the Franchise Agreement. The overall rate increase was for 4.25%. The increase became effective on July 1, 2020.

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Another increase to the solid waste collection rates is necessary for the next fiscal year. The process for the Proposition 218 Hearing is summarized below:

1. Mail out a public notice to property owners (Attachment 1) 45 days in advance of the public hearing that includes:
 - a) A description of the reasons for the cost increase
 - b) The proposed rate increases
 - c) The Public Hearing date and time

The notice is to be mailed to all affected parties, i.e., property owners.

2. The Proposition 218 Hearing is held in accordance with the California Constitution Article XIID. City Council shall consider all written and oral comments received. Oral comments are not considered formal protest unless accompanied with a written protest. Only one objection is permitted per person billed. An objection must include: the property owner/customer information; the associated parcel; and the name and signature of the customer submitting a protest. Due to the COVID-19 issues, the City is accepting written protests via e-mail to cityclerkgroup@cityofgoleta.org.
3. If protests against the rate increase are not received from a majority of the property owners or customers on record, then the City Council is authorized to impose the rate changes as adopted by resolution.
4. Once the resolution is adopted, a notice will be mailed to all affected parties that the rate increase will be effective in 30 days.

The Franchise Agreement includes a provision for annual adjustments to the solid waste collection rates charged to residential and commercial subscribers by setting a not-to-exceed cap on the rates, called the "Maximum Rate." MarBorg may set annual collection rates at, or below, the Maximum Rate established in the Agreement. In accordance with Section 12.2, Adjustment of Rates, MarBorg must submit a formal request for rate increase and supporting documentation sixty (60) days prior to the adjustment of the Maximum Rates. Any approved rate increase is to be effective on July 1, 2021.

DISCUSSION:

FY 2021/22 Solid Waste Collection Rates

On March 12, 2021, Public Works staff received a request for a rate increase from MarBorg Industries (MarBorg) (Attachment 2). The rate increase is clarified below:

- 1) As defined by the Franchise Agreement, the rates are categorized into a service component and a disposal component. The service component is adjusted based on the change in the consumer price index (CPI) and the disposal component is adjusted based on actual tipping fee costs. In accordance with the franchise agreement, the service component equates to 59.6% of the rate and the disposal component equates to 40.4% of the rate.

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- 2) Public Works staff has reviewed and verified that the CPI presented by MarBorg when calculated using a February 2020 – February 2021 change is 1.0%. That 1.0% is then multiplied by the service component percentage and the total acceptable CPI increase to the rate is 0.60% ($1.0\% \times 59.6\% = .60\%$).
- 3) Public Works staff reviewed the tipping fee increase request which includes the following:
 - o Santa Barbara County Trash and Recycling fee increase from \$158.00/ton to \$164.00/ton
 - o Santa Barbara County Green Waste fee increase from \$47.00/ton to \$49.00/ton

Note that both increases are associated with the Tajiguas ReSource Center that is currently in final construction. The new processing facility will recover recyclables from the trash waste streams to prevent them from being landfilled. Additionally, food waste will be recovered and sent to an anaerobic digester where it will be turned into usable compost. When completed, the facility will increase the area's recycling rates upwards of 85%, generate green energy, reduce greenhouse gas emissions, and allow the City to comply with regulatory requirements. The facility is scheduled to be fully operational by the end of 2021.

Public Works staff has reviewed and verified that the disposal component increase is 4.19%. That 4.19% is then multiplied by the disposal component percentage and the total acceptable increase to the disposal component rate is 1.69% ($4.19\% \times 40.4\% = 1.69\%$).

Public works under the Franchise agreement with MarBorg Industries has increased the environmental services program fee from 8% to 12%, or by 4% of the net revenue (gross revenue, minus fees). This translates to a rate payer increase of 3.62% (which is based on gross revenue). This is done in accordance with Public Resources Code 41901 and SB 1383 Organics. The environmental services program fee increase has been negotiated with MarBorg Industries, and if approved will be memorialized with an amendment to the franchise agreement (Attachment 5).

The environmental services program fee is commensurate with neighboring jurisdictions and will primarily be used to implement recent State mandates and programs, including: full trash capture programs to prevent trash from entering our storm drains, creeks, and ocean; composting and recycling programs; edible food recovery programs to reduce food waste and greenhouse gases, while feeding the food insecure; water quality protection programs; and creek and watershed management programs to restore natural creek conditions, habitats and further improve water quality. A portion of the fee increase may also be used for continued support of our ongoing programs such as street sweeping, storm drain maintenance, cleanup events, household hazardous waste collection, pollution prevention programs, public and school education programs, spill response, and construction site pollution prevention, among others. The following table summarizes area agency solid waste program fees.

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	Goleta Current	Goleta Proposed	City of Santa Barbara (Estimate)	County Zone 1 – Carp., Montecito	County Zone 2-North of Hollister	County Zone 3- South of Hollister
Program Fee	8%	12%	10-15%	11%	11%	11%

The following table summarizes Goleta’s existing and proposed rates and the current neighboring jurisdiction rates and represents only the base service levels for single family residential.

Agency	Existing Goleta Rates	Proposed Goleta Rates	City of Santa Barbara	Zone 1 Carpinteria, Montecito, Summerland	Zone 2 Goleta unincorporated north of Hollister Ave.	Zone 3 Goleta unincorporated south of Hollister Ave.
35 gallon	\$ 31.45	\$ 33.31	\$ 42.25	\$ 53.54	\$ 38.46	\$ 36.14
65 gallon	\$ 35.24	\$ 37.32	\$ 52.37	\$ 59.27	\$ 46.80	\$ 45.49
95 gallon	\$ 40.71	\$ 43.11	\$ 62.49	\$ 65.16	\$ 54.95	\$ 54.66

- 4) The overall rate increase is 5.91% (0.60% CPI + 1.69% tipping fee + 3.62% environmental program fee).

Following the process outlined above, the Department of Public Works mailed out a public notice to property owners (Attachment 1) on April 16, 2021 in advance of the public hearing discussed herein. The public hearing was also noticed in a local newspaper that was published on May 20, 2021. If the City Council approves the rate increase by Resolution (Attachment 3), a notice of announcing the increase will be sent on June 2, 2021. Subsequently, the approved rates will then be effective July 1, 2021. The impact to residential and commercial rate payers is shown in the following table of select residential and commercial rates. The full rate schedule is included in Attachment 4.

Service Level	Monthly Maximum Solid Waste Collection Rates		
	Current rates	Proposed Rate: 5.91% Increase	\$ Change
35-gallon Single Family Residential Cart Service ¹ Refuse/green waste 1x/week, recyclables every other week	\$31.45	\$33.31	\$1.86
65-gallon Single Family Residential Cart Service ¹ Refuse/green waste 1x/week, recyclables every other week	\$35.24	\$37.32	\$2.08
95-gallon Single Family Residential Cart Service ¹ Refuse/green waste 1x/week, recyclables every other week	\$40.71	\$43.11	\$2.40
35-gallon Multi Family Residential Cart Service ² Refuse 1x/week, recyclables every other week	\$26.70	\$28.27	\$1.57
65-gallon Multi Family Residential Cart Service ²	\$29.77	\$31.53	\$1.76

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Refuse 1x/week, recyclables every other week			
95-gallon Multi Family Residential Cart Service ² Refuse 1x/week, recyclables every other week	\$34.55	\$36.59	\$2.04
35-gallon Commercial Cart Service ² Refuse 1x/week, recyclables every other week	\$38.22	\$40.48	\$2.26
65-gallon Commercial Cart Service ² Refuse 1x/week, recyclables every other week	\$44.36	\$46.98	\$2.62
95-gallon Commercial Cart Service ² Refuse 1x/week, recyclables every other week	\$51.99	\$55.07	\$3.08
Commercial Bin Service ³ 3-yd bin, collected 3x/wk.	\$769.09	\$814.53	\$45.44

Contract Compliance: As part of processing a rate increase request and in accordance with Section 4.5.1 Satisfactory Performance, Public Works staff has verified MarBorg's compliance with the conditions of the franchise agreement. Below is a summary of critical areas Public Works staff has reviewed.

- **Diversion compliance:** In accordance with the franchise agreement Amendment 2, MarBorg is required to maintain a minimum combined commercial and residential diversion of 41.5%. The diversion is indicated below, and MarBorg is in compliance with the agreement:

Sector	Disposal (Tons)	Recyclables & Green Waste (Tons)	Total Material Generated (Tons)	Diversion %
Residential	6,280.10	6,433.75	12,713.85	50.60%
Commercial	11,551.18	3,154.86	14,706.04	21.45%
Commercial Roll-off	5,877.21	11,248.06	17,125.27	65.68%
Total	23,708.49	20,836.67	44,545.16	46.78%

- **Customer Satisfaction:** On a monthly basis MarBorg provides the City with a list of complaints received and their resolution. Most complaints are relative to missed pick up, carts placed out late or extra material placed out for collection. There are no longstanding unresolved issues that need addressing.
- **Timely Payment of fees:** MarBorg pays all fees to the City on time and in accordance with the Franchise Agreement.
- **Competitive Rate Guarantee:** Public Works staff has reviewed the existing rates of the County of Santa Barbara and the proposed rates of the City of Santa Barbara. While the actual service level and days of service vary between agencies, the City of Goleta rates are equal to or lower than the surrounding area. This is in accordance with Section 12.3 of the Franchise Agreement, Competitive Rate Guarantee.
- **Special Collections:** MarBorg provides special collection services (Bulky Items, Batteries, E-Waste and White Goods) at no additional expense. Each residential

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property is entitled to two (2) on-call services per fiscal year. These collections include bulky item collections. Bulky items include furniture, white goods, green waste, electronic-waste, fluorescent bulbs, household batteries and clothing. Note that electronic-waste and white goods are in an unlimited quantity.

- **Sharps and Goleta Buyback Center:** MarBorg continues to provide a mail back program for sharps and access, at no additional cost, to the Goleta Buyback Center. This center accepts antifreeze, batteries, oil, paint, fluorescent bulbs, compact disks, cell phone, computers, televisions, and other electronic waste.
- **Participation in local events and Community Clean ups:** Due to the Covid 19 pandemic, participation has been minimal, but MarBorg continues to proactively participate in local clean up events as requested by the City.

Through this contract review process, it is apparent that MarBorg's dedication to the City of Goleta has proven a good partnership with the City. It is the conclusion of the Public Works Department that the contractor, MarBorg Industries, is in compliance with the Franchise Agreement and has faithfully submitted the request for the rate increase. Therefore, Public Works staff through the writing of this report supports the findings to recommend the requested rate increase pending the receipt of any letters of concern from the public.

FISCAL IMPACTS:

The combined cost of the mailing for the public hearing notice and the 30-day notice prior to implementation is approximately \$7,800 and will be covered by available fund balance in the Solid Waste Fund, Fund 211 in current Fiscal Year 20/21. The overall increase to the MarBorg customers/rate payers will be 5.9%, with specific rates provided in Attachment 4.

Under the Franchise Agreement, the City receives from MarBorg a monthly 5% Franchise Fee, and a monthly 8% environmental services program fee, which will be increased to 12% if approved. These fees are calculated on the adjusted gross monthly revenue derived from franchise collection operations in the City and remitted to the City on a monthly basis. The additional revenue from the 4% increase is projected to be between \$300,000-\$400,000 annually, depending on annual revenues. There is no City revenue increase projected for the Franchise Fee of 5% for FY2021/2022. Under the Agreement's rate model, all residential and commercial rates are increased uniformly. The Two-Year Budget Plan for FY 2021/22 currently reflects status quo amounts with minor increases to reflect changes to service levels. Public Works staff will continue to monitor activity levels and rate impacts and may recommend a mid-year adjustment if necessary.

ALTERNATIVES:

Council may elect to not approve the rate increase at this time. In doing so, the existing rates will remain in place. At that time MarBorg may, in accordance with Section 19.1.3 Notice of Appeal, file a notice of appeal citing its factual contentions and provide all

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associated back-up documentation. Within 30 days of receipt of the appeal the City Manager shall decide on the matter, per agreement.


Reviewed By:

Legal Review By:

Approved By:


Kristine Schmidt
Assistant City Manager


Michael Jenkins
City Attorney


Michelle Greene
City Manager

ATTACHMENTS:

1. Notice of Public Hearing to Consider a Proposed Increase in Rates for Solid Waste Collection
2. MarBorg Rate Increase Package
3. Resolution No. 21-__" A Resolution of the City Council of the City of Goleta, California, Increasing the Solid Waste Maximum Rates
4. City of Goleta residential and commercial solid waste collection rates for FY 21/22
5. Amendment No. 3 Franchise Agreement for Solid Waste Handling Services Between the City of Goleta and MarBorg Industries.