

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

* * *

December 4, 2018

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2. Public Education Plan
3. Maximum Initial Company Compensation
4. Example Rate Adjustment Formula
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8. City Owned/Managed Events
9. City Hazardous Waste Manifest
10. MCR & MORE Activities Worksheet & Future SB 1383 Worksheet
11. List of Acceptable and Non-Acceptable Recyclable Materials

RECITALS

This Franchise Agreement (Agreement) is entered into this ___ day of _____, 2018, by and between the City of Manhattan Beach (City) and Arakelian Enterprises, Inc. dba Athens Services (Company).

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

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

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

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

WHEREAS, the Legislature of the State of California, in California Public Resources Code Section 41780 et seq., has declared a mandatory commercial recycling program and that it is the policy goal of the state that not less than 75 percent of solid waste generated be source reduced, recycled, or composted by the year 2020, and annually thereafter; and,

WHEREAS, California Public Resources Code Section 42649 et seq. requires a mandatory commercial organics waste diversion program; and,

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

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

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

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

ARTICLE 1

DEFINITIONS

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

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

1.1 AB 939 or the Act

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

1.2 Abandoned Items

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

1.3 Affiliate

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

managed by any business or individual that has a direct or indirect ownership interest in Company. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

1.4 Applicable Law

"Applicable Law" means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any federal, state, county, city, and local governmental agency having jurisdiction over the collection and disposition of Solid Waste, Recyclable Materials, Organic Waste and Construction and Demolition Waste that are in force on the Effective Date and as they may be enacted, issued, or amended during the term of this Agreement.

1.5 Agreement

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

1.6 Backyard Service

"Backyard Service" means that Company removes all Collection Carts, Green Waste bundles and Refuse Cart Overages per Section 3.1.2 from a Cart Customer's designated Collection location other than curbside, such as backyard, side yard, or driveway, for Collection, and returns Carts when Collection is complete.

1.7 Billings

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

1.8 Bin

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

1.9 Bulky Waste

“Bulky Waste” means discarded furniture (including chairs, sofas, mattresses, and area rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”); Electronic Waste (including stereos, televisions, computers, VCRs and other similar items commonly known as “brown goods”, see Section 1.27); Residential wastes (including wood waste, tree trunks and large branches if no longer than two feet in diameter, four feet in length and 50 pounds in weight per bundle, scrap wood, in the aggregate not exceeding one cubic yard per Collection); clothing; and tires. Bulky Waste items do not include such things as car bodies or Construction and Demolition Waste, or any other items that cannot be handled by two persons.

1.10 Business Day

“Business Day” means each calendar day, excluding Saturdays, Sundays, and holidays.

1.11 CalRecycle

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

1.12 Cart

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 30 gallons and no greater than 101- gallons.

1.13 City

“City” means the City of Manhattan Beach, a municipal corporation, and all the territory lying within the municipal boundaries of City as presently existing or as such boundaries may be modified during the term of this Agreement.

1.14 City Owned/Managed Events

“City Owned/Managed Events” means events owned, planned, and managed primarily by City staff.

1.15 Collect/Collection

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

1.16 Commercial and Industrial

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

1.17 Company

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

1.18 Company Compensation

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

1.19 Complaint

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

1.20 Composting

“Composting” means the separation of organic matter from the waste stream for controlled decomposition into a material that may be used as a soil amendment, such as through the use of composting bins provided under Section 3.3.6.

1.21 Construction and Demolition Waste

“Construction and Demolition Waste” means used or discarded construction materials removed from a Premises during the construction or demolition of a structure.

1.22 Containers

“Containers” means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Roll-off Boxes.

1.23 CPI

“CPI” means the Consumer Price Index for Trash and Garbage Collection (CUUR0000SEHG02), U.S. City average.

1.24 Customer

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

1.25 Disposal

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

1.26 Disposal Site(s)

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

1.27 Electronic Waste or E-Waste

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

1.28 Environmental Laws

“Environmental Laws” means all federal and State statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601 et seq.; the Resource Conservation and Recovery Act, 42 USC § 6902 et seq.; the Federal Clean Water Act, 33 USC § 1251 et seq.; the Toxic Substances Control Act, 15 USC § 1601 et seq.; the Occupational Safety and Health Act, 29 USC § 651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code § 25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code § 25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code § 13000 et seq.; the

Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code § 25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated thereunder.

1.29 Facility

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

1.30 Franchise

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

1.31 Food Waste

“Food Waste” includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates, fast food wrappers, egg cartons, pizza boxes, paper packaging, and 100% fiber based compostable serving-ware)
- Tea bags, coffee grounds and filters; and
- Fats, oils and grease.

1.32 Green Waste

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

1.33 Hazardous Substance

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

1.34 Hazardous Waste

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

1.35 Household Hazardous Waste

“Household Hazardous Waste” (“HHW”) means Hazardous Waste generated at Residential Property.

1.36 Mandatory Commercial Recycling (“MCR”) Requirements

“Mandatory Commercial Recycling Requirements” means the requirements of California Jobs and Recycling Act of 2011 (Chapter 476, Statutes of 2011).

1.37 Mandatory Organics Recycling (“MOR”) Requirements

“Mandatory Organics Recycling Requirements” means the requirements of the Organic Waste Recycling Act of 2014 (Chapter 727, Statutes of 2014 modifying Division 30 of the California Public Resources Code), as it may be amended from time to time.

1.38 Materials Recovery Facility

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

1.39 Mixed Waste Processing

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

1.40 Multi-Family

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

1.41 Municipal Code

“Municipal Code” means the City of Manhattan Beach Municipal Code.

1.42 Net Recycling Revenue

“Net Recycling Revenue” means the selling price of the processed Recyclable Material commodities, excluding Construction and Demolition material and Organics material, less the cost of processing, contamination, disposing post-processing residual waste, transporting commodities to markets, and transporting residuals to disposal.

1.43 Organics or Organics Waste

“Organics” or “Organics Waste” means Green Waste, Food Waste, or other organic material as defined by CalRecycle, whether individually or in combination.”

1.44 Owner

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

1.45 Permanent Roll-off Box Service

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

1.46 Person

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

1.47 Premises

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

1.48 Putrescible Waste

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

1.49 Rate Year

“Rate Year” means the 12-month period from July 1st to June 30th, each year of the Agreement.

1.50 Recycling

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

1.51 Recyclable Materials

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

1.52 Residential

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

1.53 Roll-off Box

“Roll-off Box” means an open-top metal Container or closed compactor boxes serviced by a roll-off truck with a capacity of 10 to 50 cubic yards.

1.54 Sand Section

“Sand Section” means approximately one third of City which runs along the coast.

1.55 SB 1383

“SB 1383” means the Short-Lived Climate Pollutants Act of 2016 (Chapter 395, Statutes of 2016), as it may be amended from time to time.

1.56 Single-Family

“Single-Family” means any Residential Property with only one dwelling unit.

1.57 Solid Waste

“Solid Waste” means all Putrescible and non-Putrescible Trash, Recyclable Material, Organic Waste, and as otherwise defined in Public Resources Code Section 40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

1.58 State

“State” means the State of California.

1.59 Temporary Service

“Temporary Service” means Solid Waste Collection services provided on a project basis, such as Construction and Demolition projects and occasional clean-up projects using a Roll-off Box or Bin. Regular Collection of Solid Waste generated by a business’s ongoing operations is not included.

1.60 Third-Party Owned/Managed Events

“Third-Party Owned/Managed Events” means events that are not owned, planned, or managed primarily by City staff.

1.61 Transformation

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

1.62 Trash

“Trash” means all Solid Waste except Source Separated Recyclable Materials, Source Separated Organic Materials, Construction and Demolition Debris and Bulky Items. Trash does not include Hazardous Substances, Hazardous Waste, Electronic Waste, or Universal Waste.

1.63 Universal Waste

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

1.64 Working Day

“Working Day” means any day that Company is required to provide Collection services pursuant to this Agreement.

1.65 Zero Waste

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

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

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

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

2.2 Administrative Fee

Company shall pay to City an Administrative Fee in a one-time lump sum payment equal to \$150,000.00 within seven days of execution of this Agreement to reimburse City for its staff time and out-of-pocket costs of awarding this Franchise.

2.3 Exclusive Nature of Franchise

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

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

2.4 Effective Date

The effective date of this Agreement shall be _____.

2.5 Commencement Date

The commencement date, reflecting the start of the term and start of collection services, shall be July 1, 2020.

2.6 Term of Agreement and Option to Extend Term

The term of this Agreement shall commence on July 1, 2020, and expire on June 30, 2027, with an extension of up to 36-months permitted at City's option. City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. If City exercises its option to extend, this Agreement will automatically renew monthly, up to 36 months unless City gives Company a 30-day written notice of termination.

2.7 Conditions to Effectiveness of Agreement

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

- a) Accuracy of Representations. Representations and warranties made by Company throughout this Agreement are accurate, true and correct on and as of the effective date of this Agreement.
- b) Absence of Litigation. There is no litigation pending in any court challenging the award of this Franchise to Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) Furnishing of Insurance and Bonds. Company has furnished evidence of the insurance and bonds required by Article 8 within 30 days of award of contract.

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

2.8 Article XIIC,D (Proposition 218)

This Agreement is contingent upon approval of the initial customer rates and any solid waste pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of Article XIID of the California Constitution (commonly referred to as Proposition 218). City agrees to undertake the notice and protest process as provided in Article XIID with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIID, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with 30 days' advance written notice at any time during the remainder of the term.

In addition, if at any time a voter initiative, as provided for in Article XIIC, Section 3, shall invalidate any portion of the fees imposed by City in furtherance of this Agreement, City shall have the option to terminate this Agreement with 30 days' advance written notice at any time during the remainder of the term. While the Agreement is in effect, Company shall be compensated in accordance with the Agreement terms.

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

2.9 Limitations on Scope of Franchise

The Franchise granted to Company shall be exclusive except as to the categories of Solid Waste listed in this Section 2.9. The granting of this Franchise shall not preclude the categories of Solid Waste listed below from being delivered to and Collected and transported by others provided that nothing in this Agreement is intended to or shall be

construed to excuse any Person from obtaining any authorization from City that is otherwise required by law:

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

- j) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- k) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold;
- l) Food Waste or other Organic Waste diverted from Disposal by delivery to hog farms or otherwise used as animal feed;
- m) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- n) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by City through City officers or employees.

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

This grant to Company of an exclusive Franchise, right and privilege to Collect, transport, or process and Dispose of Solid Waste shall be interpreted to be consistent with State and federal laws, now and during the term of the Franchise, and the scope of this exclusive Franchise shall be limited by current and developing State and federal laws with regard to Solid Waste handling, exclusive Franchise, control of Recyclable Materials, Solid Waste flow control, and related doctrines. In the event that future interpretations of current law, enactment or developing legal trends limit the ability of City to lawfully provide for the scope of Franchise services as specifically set forth herein, Company agrees that the scope of the Franchise will be limited to those services and materials which may be lawfully provided for under this Agreement, and that City

shall not be responsible for any lost profits claimed by Company to arise out of further limitations of the scope of the Agreement set forth herein. In such an event, it shall be the responsibility of Company to minimize the financial impact to other services being provided as much as possible.

2.10 City's Right to Direct Changes

2.10.1 General

City may direct Company to perform additional services (including new diversion programs, etc.) or modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services that may entail new Collection methods, different kinds of services and/or new requirements for Customers, and alternative rate structures are included among the kinds of changes that City may direct. Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services, if Company demonstrates that its cost of service would increase.

2.10.2 New Diversion Programs

Company shall present, within 30 days of a request to do so by City, a proposal to provide additional or expanded diversion services. The proposal shall contain a complete description of the following:

- Collection methodology to be employed (equipment, manpower, etc.);
- Equipment to be utilized (vehicle number, types, capacity, age, etc.);
- Labor requirements (number of employees by classification);
- Type of materials Containers to be utilized;
- Provision for program publicity/education/marketing; and,

- Three-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.

2.10.3 City's Right to Acquire Services

Company acknowledges and agrees that City may permit other Persons besides Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, Company and City cannot agree on terms and conditions of such additional or expanded diversion services within 90 days from the date when City first requests a proposal from Company to perform such services, Company acknowledges and agrees that City may permit Persons other than Company to provide such services.

2.11 Ownership of Solid Waste

Once Solid Waste is collected, ownership and the right to possession shall transfer directly from the Customer to Company by operation of this Agreement. Subject to Company's objective to meet the source reduction and Recycling goals which apply to City and City's right to direct the Company to process and dispose of Solid Waste at a particular licensed Solid Waste Facility or to dispose of Solid Waste at a particular licensed Disposal Site, if and only if City exercises such right by providing specific written direction to Company, Company is hereby granted the right to retain, Recycle, process, Dispose of, and otherwise use such Solid Waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Company. Subject to the provisions of this Agreement, Company shall have the right to retain any benefit resulting from its right to retain, Recycle, process, Dispose of, or reuse the Solid Waste, Green Waste, and Recyclable Materials which it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, which is disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility) shall become the property of the Owner or operator of the Disposal Site(s) once deposited there by Company. City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do

so; however, nothing in this Agreement shall be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Company.

2.12 Representations and Warranties

2.12.1 Company Status

Company represents and warrants that it is duly (1) organized, (2) validly existing and in good standing under all applicable laws, (3) licensed and qualified to transact business in the State of California and (4) has the power to provide services as required by this Agreement.

2.12.2 Company Authorization

Company represents and warrants that it has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of Company (or the shareholders, if necessary) have taken all actions required by law, its articles of incorporation, its bylaws or otherwise to authorize the execution of this Agreement. The Persons signing this Agreement on behalf of Company have authority to do so. Company shall authorize one employee for City as a single point of contact for issues arising under this Agreement. City may accept that this employee's actions are taken on behalf of and with the full approval of Company.

2.12.3 Company's Investigation

Company represents and warrants that it has made an independent investigation (satisfactory to it) of the conditions and circumstances surrounding this Agreement and the work to be performed by it.

2.13 Annexations

This Agreement extends to any territory annexed to City during the term of this Agreement which is not within the service area for another solid waste enterprise which qualifies under Public Resources Code Section 49521 to continue to provide solid waste services. In such event, this Agreement shall become effective as to such area at the

earliest possible date permitted by law, and City agrees that it shall cooperate with Company to fulfill any requirement necessary for Company to serve the annexed area consistent with this section.

2.14 Business License

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

ARTICLE 3

DIRECT SERVICES

3.1 Solid Waste Collection Services

The work to be done by Company pursuant to this Agreement shall include, but not be limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and all other items necessary to perform the services required. The enumeration of, and specification of requirements for, particular items of labor or equipment shall not relieve Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in this Agreement or not.

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

3.1.1 Residential Trash Cart Service

Company shall Collect Trash delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. Collection shall be semi-automated, such that Company may be required to manually position Customer Carts as needed to ensure that Containers are properly Collected and returned to the appropriate location after Collection so as not to impede parking or traffic. The designated Collection location of Containers, if disputed by the Customer or Company, shall be determined by City. Additionally, if in City's opinion the existing Collection location is inappropriate, City may require the Customer and/or Company to relocate the Collection location.

Company will supply each Residential Trash Cart Customer with Trash Carts of 20-, 35-, 65-, or 95 gallons, as requested by Customer as described in Sections 3.7.1.1 and 3.7.1.3. Single Family Customers shall be charged based upon the size and number of Trash Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

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

Company shall replace all Carts (Trash, Recycling and Organics Waste) with lids closed and placed upright after emptying them.

3.1.2 Trash Cart Overage

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

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

Residential Cart Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two per year. In addition to the two free pickups, Company shall Collect all additional Trash placed out for Collection in the Residential Customer’s own Containers (bags, barrels, etc.) at no additional charge for two weeks beginning each December 26. This service is limited to

Trash that could otherwise be placed in the Trash Cart, and not Bulky Items which are Collected in accordance with Sections 1.9 and 3.1.5.

3.1.3 Commercial and Multi-Family Service

3.1.3.1 Bin Services

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

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

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

3.1.3.2 Commercial Cart Service

Company shall Collect Trash from Commercial Customers placed at the curb in Company-provided 35-, 65- or 95-gallon Carts, labeled with the Customer's address and days of the week to be Collected. Company shall provide such service at the frequency requested by the Customer, but not less than once per week. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

3.1.3.3 Locking Bins

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

3.1.3.4 Scout Service/Push-Out Service

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

3.1.4 Roll-off Box Service

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

3.1.5 On-Call Bulky Waste Pickup

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

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

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

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

3.1.5.1 Single and Multi-Family Customers

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

3.1.5.2 Commercial Customers

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

3.1.6 Commercial Container Overflow Procedures

3.1.6.1 Service Level Upgrade

Customers using Bins, Roll-Off Boxes, and Commercial Carts that regularly produce more Solid Waste than their current level of service can accommodate may have their service level increased in accordance with the following procedure:

First Incident in Three Month Period – If more material is placed for Collection than fits in a Container, Company shall photograph the overflowing Container, Collect the Solid Waste, contact the Customer by phone or in person and speak with the Customer about the situation, and send to the Customer (at both the service and billing addresses) the picture and a letter instructing that the next instance of an overflowing Container may result in a charge, and possibly in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Container in a three-month period, Company shall photograph the overflowing Container, Collect the Solid Waste, contact the Customer by phone or in person and speak with the Customer to discuss about the situation, and send to the Customer the picture and a letter instructing that a third incident in that same three -month period will result in an increase in the level of service, and that a Container overage fee may be

charged in the future to clean up spilled waste or waste left beside Container for Collection.

Third Incident in Three-Month Period – Upon the third event of an overfilled Container in a three-month period, Company shall photograph the overflowing Container, Collect the Solid Waste, contact the Customer by phone or in person and speak with the Customer to discuss about the situation, and send to the Customer the picture and a letter documenting the third incident. Thereafter, Company is authorized to deliver the next larger-sized Container, or an additional Container, or increase frequency of Collection, as best addresses Collection needs, to the Premises, and to adjust the service rate to the rate then in effect for service using the delivered Containers.

3.1.6.2 Container Overage Fee

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

3.1.7 Temporary Bin Service

Company shall provide Temporary Bin Service to all Customers requesting such service, including service for Third-Party Owned/Managed Events. However, if Company does not provide the requested Container within 48 hours of request, Customer can call and receive Temporary Service from another company. Special consideration shall be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.2 Recycling Services

3.2.1 Residential Recycling Service

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Trash Collection. Company will provide each Residential Customer with a Recycling Cart. Company will make available one or more additional Recycling

Carts to Customers who regularly recycle more than will fit into their existing Recycling Cart(s). No extra fee will be charged for Recycling service or additional Recycling Carts.

Company shall provide 35-, 65-, and 95-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Sections 3.7.1.1 and 3.7.1.3. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

As of the Effective Date, at a minimum, Recyclable Material Collected shall include, but not be limited to the items listed in Exhibit 11.

3.2.2 Commercial Recycling

Company agrees to provide Recycling Collection service to all Trash Bin service and Commercial Cart Customers requesting it from Company, set at rates not to exceed 50% of the corresponding Trash rate for the same Container size and frequency of service. Company may purchase Recyclable Materials from its Customers as well. Company agrees to provide Recycling Bins or Carts to Bin Trash Customers in sufficient quantities to meet the Recycling needs of each Customer. As of the Effective Date, Recycling Collection programs shall be made available at a minimum for the items listed in Exhibit 11.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Trash.

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

To assist City in meeting the requirements of the Act, Company must have a Recycling program and incentives whereby, at a minimum, Company Collects the Recyclables Materials described in Section 3.2 and Construction and Demolition Debris. Company

agrees to assist City to identify Multi-Family, Commercial and Industrial Premises required to arrange for Recycling Services under State law, offer Recycling Collection to such Premises, and notify City in the event of refusal by Customer to subscribe for Recycling Collection.

Commercial Recycling Site Visits – Company will send a Company representative to visit each Multi-Family Bin and Commercial Customers’ Premises not currently subscribing to Recycling service and meet with the Customer for the purpose of establishing a Recycling Program. Company shall visit each new commercial and multi-family customer prior to start of service under this Agreement and, each existing customer without recycling service at least once per calendar year. The meeting shall be for the purpose of establishing a new Recycling program, enhancing an existing Company-provided program, and/or documenting existing third-party-provided programs. Company shall present customers with service and cost proposals for the establishment or enhancement of a Company-provided recycling program. Company shall provide a report to City noting the time, customer contact, and result of each meeting; and, if the customer will not agree to a meeting, provide the time of contact, customer contact name and number, and reason for not accepting a meeting.

Company will report all customers that have service levels within the thresholds of the Mandatory Commercial Recycling Requirements. Fifty percent of the Customers shall be contacted within the first six months, and 100 percent of the Customers shall be contacted during the first 12 months. Company will provide a monthly log to City, including the name and address of the Customer, the date of the visit and the contact name and phone number, demonstrating that the required visits have been made, and reason provided for not establishing a recycling program. Company shall ask, and the report shall indicate, whether the Customer has another Recycling program in-house or through a third party and, if so, what type. At the end of the first six months of service, and again at the end of the first 12-month of service, Company will provide City with two lists, one of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Trash service levels including number and size of

Containers and number of weekly pickups, and Recycling service levels (if applicable), including number and size of Containers and number of weekly pickups. Lists shall also include whether the Customer indicated that they had an alternative recycling program and, if so, what type. The lists shall be sorted so that Customers with and without Recycling Containers are grouped separately.

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

On a monthly basis, Company will provide to City an updated Mandatory Commercial Recycling (“MCR”) and Mandatory Organics Recycling (“MORE”) Activities Worksheet (Exhibit 10), and any future SB 1383 worksheets provided by CalRecycle.

3.2.3 School Recycling Services

Company shall offer Recycling Collection service to all public and private schools (pre-school through 12th grade) within the City limits at no additional charge.

3.2.4 Funding of City Recycling Needs

Company shall provide City with \$37,000.00 by the Commencement Date to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support City’s Solid Waste goals. This amount shall be increased by \$1,000.00 annually and remitted to City on each subsequent July 1st as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
Commencement Date	\$37,000.00	July 1st, 2024	\$41,000.00
July 1 st , 2021	\$38,000.00	July 1st, 2025	\$42,000.00
July 1 st , 2022	\$39,000.00	July 1st, 2026*	\$43,000.00

July 1st, 2023 \$40,000.00

- * If City exercises option to extend this Agreement beyond June 30, 2027, July 1 payments will continue to be increased by \$1,000.00 per year.

3.2.5 Construction and Demolition Waste Recycling

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

- Following City's Construction and Demolition Debris Diversion requirements of the Municipal Code;
- Transporting all Construction and Demolition Waste loads to a Materials Recovery Facility where they will be processed for reuse, or, if materials have been source separated, they may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Roll-off Box Customers as to the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators regarding how to divert such materials, and providing a how-to brochure with alternative processing Facility contact information; and,
- Contacting contractors on a list provided by City annually to educate them on Construction and Demolition Waste diversion.
- Complying with CalRecycle and California Green Building Standards Code (CalGreen) requirements for the processing and diversion of Construction and Demolition Waste material and land clearing material.
- Diverting a minimum of 65 percent for Construction and Demolition Waste material or the minimum diversion standard specified by CalGreen, whichever is greater.

3.2.6 City Option for Exclusive Construction and Demolition Debris Collection

City reserves the right to require Company to exclusively Collect all Construction and Demolition Waste generated in the City at rates not to exceed the rates included in Exhibit 3 at any time during the Agreement Term. Company will be required to divert a minimum of 75% of all Construction and Demolition Waste Collected from landfilling under this option. Construction and Demolition Wastes does not apply towards diversion requirements under Section 3.8.1. Such maximum rates shall be adjusted in accordance with Article 6. This does not preclude City from continuing to permit open competition, to select another exclusive hauler for Construction and Demolition Waste, to competitively procure an exclusive Construction and Demolition Waste collector, or to negotiate with Company for Construction and Demolition Waste Collection.

3.2.7 Marketing and Sale of Recyclable Materials

Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Customers will share in the Net Recycling Revenue generated from Manhattan Beach Recycling programs through a 50% credit that will be calculated during the annual rate adjustment period for each service type (e.g., residential and commercial) and credited to Customers effective July 1 for credits earned during the prior calendar year. Net Recycling Revenue is calculated by deducting the average cost per ton for processing and disposal from gross Recycling revenue.

Company will conduct two waste characterizations per year to determine the percentages of each commodity per ton of recyclable materials, and the overall diversion rate. The diversion rate will be applied to the total number of tons processed at the Company's MRF to calculate the total number of tons recovered. The weighted average rate for each commodity will be calculated by multiplying its average market rate by its percentage. The rates for each commodity will be aggregated to calculate the average value for all commodities. The average value will be multiplied by the total number of tons recovered at the Company's MRF to calculate the gross Recycling revenue.

The total cost of material processed at the Company's MRF is the total tonnage processed by the average processing cost per ton. The total tonnage processed minus the total tons recovered will yield the total tonnage disposed. The number of total tons disposed multiplied by the average cost per ton for disposal determines the total disposal cost. The disposal cost includes transportation and host fees.

Net Recycling Revenue and tonnage sold shall be reported to the City on an annual basis by March 31 of each year for the previous calendar year (e.g., by March 31, 2021, Contractor shall report for the period July 1, 2020 to December 31, 2020). Company shall also calculate and report the annual rebate amount for Residential and Commercial Customers, to be submitted by March 31 of each year, even when a rate adjustment request per Section 5.4 is not submitted. Example rebate formulas are shown in Exhibit 4C.

3.2.8 Universal Waste

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

3.3 Organics Program

3.3.1 Residential Organics Collection

Company shall provide weekly Collection of Organics Waste on the same day as Trash and Recycling Collection to all Trash Cart Customers. Company shall distribute to each

Residential Cart Customer one 35-, 65-, or 95-gallon Organics Waste Cart in accordance with Sections 3.7.1.1 and 3.7.1.3. Space-constrained Customers may request an 18-gallon Organics Waste Cart. Company shall make available one or more additional Organics Waste Carts to Customers that regularly separate more Organic Waste than will fit in their current Cart(s). Organics Waste Services and additional Organics Waste Carts shall be provided at no additional charge. Organics Waste Collection will be made available to all Residential Customers, including both Single and Multi-family Customers, whether the Customer uses Bins or Carts for Trash Collection.

Food Waste is not required to be bagged before being placed in the Residential Customers' Organics Waste Cart.

Company shall provide each Residential Customer with a kitchen Food Waste pail to facilitate transfer of Food Waste to the Organics Waste Cart. Company shall provide initial and replacement pails at no additional cost to City or Customers. Ownership of kitchen pails shall remain with Company at all times.

Company shall provide on-going public education and outreach to customers regarding the program, including but not limited to instructions on what materials may be placed in the Organics Waste Carts, and any other information required by CalRecycle.

Company shall initially provide door hangers, or direct mail piece, to be approved by City, and shall continue to provide Customer outreach throughout the term.

Company will divert Collected Organics Waste from Disposal, providing end uses that maximize diversion credit in accordance with CalRecycle guidelines.

Residential Organics Waste customers who place unacceptable Organics Waste materials into the Organics Waste Container will be handled in accordance with the procedures set forth in Section 3.4 with respect to the placement of non-Recyclable Materials into the Recycling Container.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Municipal Code Section 5.24.010(E) size restrictions of

bundles a maximum of 48 inches long and 18 inches in diameter, and bundled weight limit of 50 pounds.

3.3.2 Commercial Organics Collection

3.3.2.1 Collection

Company shall Collect, process and divert Organics Waste from Commercial Premises. Company shall provide a program sufficient to enable City and Customers to meet or exceed the requirements of Public Resources Code Sections 42649.81 and 42649.82.

Company shall tailor the appropriate program to fit the waste generation and space constraints of each Customer. Company shall offer the following options, all-inclusive in this program:

- **Organics Waste Cart:** Businesses that have the space for an additional Cart will have the option to receive a 35-, 65- or 95-gallon Commercial Organics Waste cart for Collection (green cart with yellow lid) at no charge to Customer.
- **Two-yard Organics Waste Bin:** Businesses that have the space and need for a larger Container have the option to receive a two-yard Organics Waste Bin for Collection (green bin with yellow lid) at no charge to Customer.

Company will also make available to Commercial Customers the purchase of an in-house organics container (e.g., slim-jim) at a rate in accordance with the approved rate schedule.

3.3.2.2 Site Visits, Education and Outreach

At least 90 days prior to the Commencement Date, Company will provide an outreach plan to City for approval identifying the site visit schedule for which to send a Company representative to visit each Commercial Customers' Premises for the purpose of assessing levels of Food Waste and Green Waste generation, assessing when Organics Waste collection service must be established to meet the requirements of Public Resources Code Section 42649.81, and encouraging all Commercial Customers to

establish Organics Waste collection service in advance of the date when mandatory service is required. Company will contact Commercial Customers and provide site visits according to the approved schedule. Company will also provide a site visit to any Commercial Customer that requests a site visit, even if it is ahead of schedule. Beginning January 1, 2020, and annually thereafter, Company representative will follow up with Commercial Customers not subscribing to the Organics Waste Collection service who are required under MORE or SB 1383 Requirements to participate. The Company representative shall assist customers with selecting appropriate Containers and Container sizing, identifying acceptable Food Waste materials for collection and processing as set forth in Section 1.31, and attempting to resolve any logistical detriments to providing Organics Waste collection service.

Company will incorporate education regarding Organics Recycling and the State requirements into materials produced under Section 4.3, and will develop its own Organics-specific instructional materials for use in educating participating Customers. All participants receive ongoing, on-site training from Company for management, kitchen staff, service employees, janitors, etc. Company will create and distribute a letter to all Commercial Customers. Additional materials may include instructional posters, brochures, or other formats as mutually agreed to between City and Company. As with all outreach material, all items must be submitted for review and approval by City prior to distribution.

On a monthly basis, Company will provide to City an updated Mandatory Commercial Recycling ("MCR") and Mandatory Organics Recycling ("MORE") Activities Worksheet (Exhibit 10), and any future SB 1383 worksheets provided by CalRecycle.

3.3.2.3 Contamination

Company shall perform contamination monitoring, route reviews, and inspections in compliance with the CalRecycle requirements under SB 1383, and provide results of all SB 1383 related activities to the City as part of the monthly reporting.

Commercial Customers that place unacceptable Food Waste or Green Waste materials or other items that cannot be Recycled such as textiles into the Food Waste or Green

Waste Container(s) will be handled in accordance with the procedures set forth in Section 3.4 with respect to the placement of non-Recyclable Materials into the Recycling Container.

3.3.2.4 Processing

Company shall process recovered Organics Waste in a manner that maximizes diversion credit for City in accordance with CalRecycle regulations.

3.3.2.5 Records and Reports

Company shall maintain records and provide reports to City, at no additional cost, of:

- Commercial and Multi-Family Customers that do and do not participate in an Organics program, whether the Organics program is provided by Company or another party, and whether the program is for Food Waste or Green Waste (such as a landscaper that composts or otherwise diverts Organic Waste);
- Which Customers are required to participate in an Organics Recycling program per Public Resources Code Section 42649.81;
- Records of Customer site visits;
- Source separated Organics tonnage Collected from Commercial and Multi-Family Customers, separately identifying Green Waste and Food Waste if collected separately;
- Commercial and Multi-Family Customers participating in food recovery programs;
- Commercial and Multi-Family Customers using third-party recycling; and,
- Additional information that may be requested by the State/CalRecycle related to Recycling and Organics programs.
- Calculation of the Net Recycling Revenue under Section 3.2.7.

3.3.2.6 Organics Waste Recycling Program Cost

The full compensation to Company to provide the Residential Organics Waste program as described in Section 3.3.1 and the Commercial Organics Waste program as described in Section 3.3.2 is included in the rates in Exhibit 3. Organics Waste Carts and Bins, public outreach, and all other elements of this program are to be provided at no additional cost. Participation in this program is anticipated to increase over time and has been factored into the rates, and no further compensation adjustment shall be implemented.

3.3.3 Roll-off Box Organic Waste Collection Service

Company shall make permanent Roll-off Box Organic Waste Collection available to all Customers at the rates shown in the approved rate schedule.

3.3.4 Holiday Tree Collection Program

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

3.3.5 End Uses for Organics Waste

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

3.3.6 Compost Bin Distribution

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

Company shall develop a public education flyer for this program and provide it to City for distribution. Company, including a Company-provided instructor, shall conduct five annual, one-hour composting classes, in May, July and October of each year and at two additional times to be determined in coordination with City.

3.3.7 School Organics Waste Recycling Services

Company shall offer Organics Waste Collection service to all public and private schools (pre-school through 12th grade) within the City limits at no additional charge.

3.3.8 Food Rescue and Donation Program

Company shall coordinate food rescue and donation efforts with each Customer deemed to generate Organics Waste as required by CalRecycle. Company shall also assist with Food Waste recovery at the City Owned/Managed and Third Party Owned/Managed events per Section 3.6.5. Company will collaborate with food recovery non-profits and financially support the collection and distribution of edible food directly from businesses within the City. Company will develop a grant program for non-profit organizations to help fund the development of infrastructure to increase food recovery opportunities including, but not limited to purchasing of appliances, kitchen supplies, and transportation. Company will evaluate potential in-kind services including, but not limited to, covering the cost of organics collection for those food recipient nonprofits that fall under AB 1826 and SB 1383 regulations, and are located outside of the City, whose service recipients are residents of Manhattan Beach.

Company will identify food recovery opportunities at Manhattan Beach businesses, address concerns, encourage participation by connecting with food recovery partners, and track potential participants for future outreach. Company will provide up to \$40,000 per year to encourage diversion of food from the waste stream, which will be distributed among the food recovery non-profits and the Food Recovery Program Infrastructure Advancement Grant, depending upon the needs identified in consultation with the City.

3.3.9 Compost Giveaway Program

Company shall provide at least one community-based, compost giveaway within City limits per Rate year (July 1 to June 30) at no charge to the City. Residents will be able to fill up their own containers with compost on a first-come, first-served basis at a location approved by City. Per City request, Company shall also provide up to 100-cubic yards of compost annually, for use in City parks, parkways, and other areas for beautification. Company shall deliver the compost to the requested location within 48 hours of City request.

3.4 Warning Notice

Company shall warn Customers who have non-Recyclable Materials in their Recycling Container, Non-organic Waste in their Organics Waste Container, or Organic Waste or Recyclables in their Trash Containers as required by CalRecycle under SB 1383. If, after three written warnings in a six-month period, the Container continues to be contaminated, a contamination fee may be charged in accordance with the approved rate schedule. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Customer will be charged a contamination fee if behavior is not corrected. The format of the warning notice must be approved by City. Company shall report monthly to City any warning notices issued, including the customer name, service address, the date contamination was observed, the person who conducted the inspection, any photographic evidence of the violation that was obtained, and any other information reasonably requested by the City. Company will also provide copies of written notices to the City on a monthly basis.

3.5 Commercial Mixed Waste Processing

Company shall process all mixed Commercial Bin and permanent Roll-Off Box Trash to recover Recyclable Materials from Customers who do not participate in Company's separate Recycling program and are not otherwise in compliance with the Mandatory Commercial Recycling Requirements. Company shall process all waste from Street and Park Litter Trash Containers. Company shall also process all waste from City Owned/Managed Events and Third-Party Owned/Managed Events to recover Recyclable Materials. This program shall be conducted at no additional cost to City or ratepayers.

3.6 City Services

3.6.1 City Facilities Collection

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

3.6.2 City Facilities Hazardous Waste Collection

Company shall Collect as needed and properly Recycle and/or Dispose of hazardous waste and tires that are generated by City Staff or at City facilities at no additional charge. Quantities of materials to be Collected at no additional charge each year shall be reasonably consistent with (defined as no more than 20% higher than) quantities of materials included in Exhibit 9. City shall contact Company when a pickup is needed, indicating the type of material in need of Collection, and arrange for a Collection.

In the event that quantities increase by more than 20% from Exhibit 9 levels, City and Company shall mutually agree to additional compensation due Company based upon verifiable costs incurred by Company.

3.6.3 Abandoned Item Collection

Company shall Collect items abandoned in the public right-of-way within 24 hours of notification to Company's customer service department or by City at no additional charge.

3.6.4 Street and Park Litter Containers

Company shall Collect and process all Solid Waste deposited in City's Street and Park Litter Containers as necessary to prevent overflow at no additional cost at all existing locations. All material in Trash Containers shall be processed to recover Recyclables. All material in Recycling Containers shall be processed and Recyclable material diverted. Additional Recycling Containers and Organics Waste Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Trash Containers to be Collected at no additional charge may be increased by up to five percent during the term at no additional charge.

3.6.5 City Owned/Managed and Third-Party Owned/Managed Events

City Owned/Managed Events - Company shall provide Solid Waste, Recycling, and Organics Collection service at City Owned/Managed events each year as may be requested by the City. This shall include providing Containers to Collect and Dispose of all Solid Waste, using waste boxes, waste box liners, Roll-Off Boxes and Bins, and providing Containers to Collect source separated Recyclables and Organics Waste. Company shall also provide signage displayed as to what can be placed in source separated Recyclables and Organics Waste Containers. Company shall also assist with Food Waste recovery at the events. Company shall provide these services at no additional cost to City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8, and any additional community events that are owned, planned, and managed primarily by City staff.

Third-Party Owned/Managed Events - Company shall provide service at Third-Party Owned/Managed events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes at cost. Liners, shall be provided at Company's cost. At no additional cost, Company will assist event venues and planners with planning for Solid Waste and Recycling needs and to maximize diversion for events. Company shall also assist with Food Waste recovery at the events.

Company shall process Trash from City Owned/Managed Events and Third-Party Owned/Managed Events to recover Recyclable Materials at no additional cost.

3.6.6 Emergency Collection and Disposal Service

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

If requested by City, Company shall provide annual training to select City staff (public works, fire, EOC representatives) on how the emergency Collection and Disposal service would occur in event of an emergency.

In the event of an emergency or natural disaster, and when requested by the City Manager or Public Works Director, Company shall provide City with the equipment and labor required to collect, cleanup, and remove debris resulting from the emergency or natural disaster. Company shall use commercially reasonable efforts to dispatch the requested equipment and labor to City as promptly as practicable following the request by the City Manager or Public Works Director.

Company agrees that, in the event that Company is unable to respond within the time period requested by City for collection, cleanup and removal of debris resulting from an emergency or natural disaster, City shall have the right to engage other persons, firms, and entities to collect, cleanup and remove debris resulting from such emergency or natural disaster for a period ending on the earlier of the date such collection, cleanup and removal is complete or thirty (30) days following the original request from City.

At the time when Company's work may continue following a natural disaster, Company will cooperate with City to implement the disaster debris cleanup implementation plan. This plan shall identify Contractor's plans for maximizing the amount of Recyclable Materials diverted from the waste and debris created by the disaster and to identify and secure disposal sites and capacity for such waste.

City shall pay Company for the services provided in this section as specified in Exhibit 3. Company's requests for payment for these services shall be accompanied by a full accounting of the labor hours, vehicle usage, disposal costs, and any other costs incurred by Company for which Company is seeking payment. City reserves the right to audit Company's books and records to ascertain the accuracy of Company's costs.

3.6.7 Sharps Collection Program

Company shall provide Sharps containers to requesting Residential Customers, both Single and Multi-Family Cart and Bin Customers. Containers will be delivered to residents' door within one week of request. Company shall provide unlimited Sharps containers at no additional charge. Sharps containers shall be pre-paid mail back containers. Company may additionally or alternatively arrange for door-to-door Collection of such containers through this program; however, Company shall continue to deliver Sharps containers to residents' door. "Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications or medical testing. Company will develop and distribute public education materials to promote this program, including promoting this program through its website and other outreach

activities targeting seniors. This program will be provided at no additional charge to City or Customers beginning on the Commencement Date.

3.6.8 Door-to-Door Household Hazardous Waste (“HHW”) Collection Program

The Company shall provide unlimited door-to-door collection of HHW from both Single Family and Multi-Family Cart and Bin Customers. Company shall provide Residential Customers with a number to call to schedule an appointment for the Collection of HHW. Individual Customers may request unlimited pickups per year.

Materials collected will include, at a minimum, the following:

- Garden Chemicals (such as fertilizer, insect sprays, weed killers, and other poisons);
- Swimming Pool Chemicals (such as pool acid and liquid and tablet chlorine);
- Automotive Waste (such as motor oil, antifreeze, waxes, polishes, cleaners, brake fluid, gasoline, used oil filters, oily rags, transmission fluid, windshield washer fluid, hydraulic fluid, and automotive batteries);
- Paint Products (such as oil-based, latex and spray paints, stripper, stains, caulking, wood preservatives, glue; and thinner);
- Household Cleaners (such as bleach, cleaning compounds, floor stripper, drain cleaner, tile remover, tile cleaners, and rust remover); and
- Miscellaneous Household Waste (such as household batteries, fluorescent tubes, thermometers, hobby glue, artist’s paint, and non-controlled pharmaceuticals).

Electronic wastes shall be advertised to be collected as Bulky Items under Section 3.1.5, and Sharps shall be advertised to be collected as part of the Sharps program under Section 3.6.7.

Company shall be required to send a public outreach piece to all Residential Dwelling units at the beginning of the program with a program description, the start date,

materials to be collected, and instructions on how to call for a pickup. Company shall be required to update City's "e-book" or "e-magazine" (see Section 4.3.2) to include this program and periodic program updates. Company shall include ongoing information for this program (including the location of City's "e-book") in public education mailers required under Section 4.3.2.

3.6.9 Downtown Maintenance Enhancements

Company shall have a two-person team operate a small rear loader, or "burro" truck to collect Trash and Recyclables in the downtown area for additional work that the City may request Company to perform outside of the scope of work of the scheduled Trash and Recycling Collection services. The cost of providing this enhanced service is not to exceed the rates in the approved rate schedule.

3.7 Containers

3.7.1 Carts

3.7.1.1 Residential Cart Distribution

Company shall notify all Residential Cart Customers of the new rate structure and Cart options (see Section 4.3.2). Company must obtain City approval of the notice and information to be sent prior to distribution. The notice will provide Customers with information regarding how to request a change to their existing Cart size.

Company shall be responsible for Cart repair and maintenance, and replacing lost, stolen or damaged Carts within three Business Days at no additional charge to the Customer or to City in accordance with Section 3.7.2.

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

Company shall comply with CalRecycle Cart replacement requirements under SB 1383, including but not limited to color and labeling requirements.

Company shall provide City the number and size of Trash, Recycling, and Organics Cart(s) used by each Customer, at the start of this Agreement and as changes are made throughout the term for billing purposes.

3.7.1.2 Removal of Existing Containers

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

3.7.1.3 Use of Existing Carts

Company may utilize existing Carts in place at the start of service under this Agreement for businesses and for Residential Customers receiving automated service under the previous Collection agreement, provided that such Carts are in reasonable condition and appearance, and subject to all on-going maintenance and replacement requirements under this Agreement. Within 12 months of the start of this Agreement, Company shall assess the condition of Carts in place, and replace any that are in poor condition or unsightly. City may also request replacement of Residential Carts it determines are in poor condition or unsightly at its own discretion. Company shall ensure that all Carts in Service comply with CalRecycle requirements under SB 1383.

3.7.1.4 Cart Design Requirements

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

Carts shall include a minimum of 30 percent recycled material and be recyclable.

3.7.1.5 Cart Load Capacity

Company shall provide new Carts in three sizes for Residential Trash, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 20, 35, 65, and 95 gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 20 to 25 gallons,
- 30 to 40 gallons,
- 60 to 70 gallons, and
- 90 to 101 gallons.

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

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-40	70
20-25	50

3.7.1.6 Cart Handles

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

3.7.1.7 Cart Lid

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

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

3.7.1.8 Cart Colors

The Trash, Recycling and Organics Waste Carts will be differentiated by color, matching current colors in distribution. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Trash Carts will be gray, Recycling Carts will be blue, and Organics Waste Carts will be green, unless CalRecycle implements regulations under SB 1383 requiring alternative colors, in which case any replacement Carts will comply with CalRecycle requirements.

3.7.1.9 Cart Labeling

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and include graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of HHW. New Carts shall be delivered with labels attached and hot stamped. Labels shall be replaced when worn. Labeling and hot stamping must be approved by City prior to ordering Carts. City's logo and, if requested by City, City's website shall appear on the Carts. Company's name and phone number shall be included on a label on the Cart lid (Company's name or logo shall not be visible on the side of the Cart). All Carts shall be labeled in accordance with CalRecycle regulations under SB 1383.

3.7.1.10 Identification Markings

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

Trash, Recycling and Organics Waste Containers that are distributed by Company to Customers must be hot stamped in white color on the front or sides of the Cart in characters no less than one inch.

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

3.7.2 Cart Performance Requirements

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

3.7.2.1 Cart Durability

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

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

3.7.2.2 Stability and Maneuverability

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

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

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

3.7.2.3 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

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

3.7.2.4 Reparability

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

3.7.3 Cart Ownership and Maintenance Responsibilities

At the end of the Agreement term, all Carts that are distributed by Company under this Agreement, shall become and remain the property of City. The Company shall be responsible for Cart repair and maintenance, and replacing lost, stolen or damaged Carts within three Business Days at no additional charge to the Customer or to City. Graffiti shall be removed or the Container replaced within one Business Day. However, Company may charge the Customer for repairing or replacing a Cart if the damage was

due to the Customer's willful negligence or abuse. In no event shall this charge be greater than Company's actual cost for replacement parts or the new Cart.

3.7.4 Bins and Compactors

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

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

3.7.5 Roll-off Boxes

Company shall provide clean Roll-off Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of Company in letters not less than three

inches high on the exterior of the Container so as to be visible when the Container is placed for use. Company shall properly cover all open Roll-off Boxes during transport as required by the State Vehicle Code.

3.8 Diversion Requirements

3.8.1 Hauler Diversion Requirements

The minimum amount of hauler-collected tonnage that shall be diverted by Company through Recycling, Organics Collection, Mixed Waste Processing, and Transformation of the Solid Waste Collected by Company under this Agreement during each year of this Agreement is 50%.

Diverted tonnage shall be tonnage Collected and processed in a manner such that the tonnage is not considered as Disposal by the State (per annual reports to CalRecycle). Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants City diversion credit. Diversion from Construction and Demolition Debris and Temporary Roll-Off Box loads, which are not collected exclusively under this Agreement, and third-party diversion shall not be considered towards the minimum diversion rate.

3.8.2 Additional Diversion Services

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

3.9 Operations

3.9.1 Schedules

To preserve peace and quiet, no Solid Waste shall be Collected between the hours of 6:00 p.m. and 7:30 a.m. Collection along northbound Highland Avenue, between 15th St to 45th St, shall not occur between the hours of 7:30 a.m. to 9:00 a.m. Collection along southbound Highland Avenue, between 45th St. to 15th St., shall not occur between the hours of 4:00 p.m. to 6:00 p.m. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works, to the extent that the exemptions are not in conflict with the Municipal Code. Company shall adjust the early morning start point of Collection routes to address and minimize service complaints when warranted and as practicable. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, or Christmas Day, alternate Collection shall be performed on the following day, with collection delayed for one day for the remainder of the calendar week. One exception shall be that Customers with seven day per week service will continue to be serviced on all holidays. All other Collection days falling on a legal holiday shall remain as scheduled. Residential Collection shall only take place Monday through Friday, except when Saturday Collection is necessary due to a holiday.

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

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

its plan incorporating any changes into a revised plan and review the revised plan with City within 30 calendar days.

3.9.2 Vehicles and Equipment

A. General. Company shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Company shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

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

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

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

D. Cleaning and Maintenance.

- 1) Company shall maintain all of its properties, vehicles, Facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.
- 2) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam cleaned on a regular basis so as to present a clean appearance. City may inspect vehicles at any time to determine compliance with this Agreement. Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. Company agrees to replace or repair to City's satisfaction, any vehicle that City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) Company shall repaint all vehicles used in the Collection of Solid Waste within 60 days' notice from City, if City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) Company shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Company shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to City upon request.
- 5) Company shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Company shall maintain accurate records of repair, which shall

include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

- 6) Upon request by City, Company shall furnish City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

E. Operation.

- 1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. Company shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205 and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed 75 dB when measured at a distance of 25 feet from the vehicle and five feet from the ground. Company shall submit to City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. Company shall store all equipment in safe and secure locations in accordance with City's applicable zoning regulations.
- 3) Subject to Section 8.1, Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

- 4) Company shall equip all route vehicles with a GPS tracking system and enable City to monitor route vehicle activity through this system by computer at City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that City has access to the online system to pull up GPS data from trucks at any time during the day.

F. City Inspection. City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes or this Agreement. No vehicle directed to be removed from service by City shall be returned to service until it conforms with, and its return to service has been approved by, City. Following any inspection, the Public Works Director shall have the right to cause Company, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The Public Works Director's determination may be appealed to the City Manager, which decision shall be final.

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

3.9.3 Litter Abatement

A. Minimization of Spills. Company shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during

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

Company shall not transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of Solid Waste transfer between vehicles, without prior written approval by City.

B. Clean Up. During the Collection or transportation process, Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not Company has caused the litter. Company shall identify instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to City. City will attempt to rectify such situations with the Customer if Company has already attempted to do so without success.

3.9.4 Personnel

Company shall furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical and efficient manner. All drivers shall be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

Company also agrees to establish and vigorously enforce an educational program that will train Company's employees in the identification of Hazardous Waste. Company's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at the processing Facility or Disposal Site.

Company shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly.

Company shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Company of a complaint related to discourteous or improper behavior, Company will consider reassigning the employee to duties not entailing contact with the public while Company is pursuing its investigation and corrective action process.

Company shall provide suitable operations, health, and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in Collection or other related operations.

3.9.4.1 Employment of Former Contractor Employees

Company shall interview all former employees of the previous hauler to be displaced by the transition of Solid Waste Collection under this Agreement. Company shall make offers of employment to all such applicants qualified for positions with Company.

3.9.5 Identification Required

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

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

3.9.6 Fees and Gratuities

Company shall not, nor shall it permit any agent, employee, or subcontractors employed by it, to request, solicit, demand, or accept, either directly or indirectly, any

compensation or gratuity for the Collection, transportation, Recycling, processing, and Disposal of Solid Waste other than required under this Agreement.

3.9.7 Non-Discrimination

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

3.9.8 Change in Collection Schedule

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

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

3.9.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

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

3.9.10 Notification of Scavenging or Other Suspicious Situations

Company shall train drivers who operate in City to recognize and report unusual or suspicious situations to the appropriate emergency responder, or to their supervisor who will contact the appropriate party. Company is responsible for forming a partnership with local authorities to coordinate notification efforts. Examples of activities that Company employees may report includes scavenging of recyclables, lost child, observation of a burglary or petty theft.

3.10 Transportation, Disposal and Processing

Company shall transport all Solid Waste Collected under Section 3.1 to a transfer station, MRF, processing Facility, Transformation Facility or Disposal Site. Unless City otherwise obtains ownership of the Solid Waste stream as described in Section 2.11, the primary Disposal Site shall be the Mid Valley Landfill [via Company's City of Industry Materials Recovery Facility] and the approved waste-to-energy facility shall be the Southeast Resource Recovery Facility (SERRF).

Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to Solid Waste Facilities and will cooperate with City in any audits or investigations of such quantities.

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

If City directs Company to a facility other than a Solid Waste Facility selected or owned by Company, and use of this Facility adversely affects the ability of Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, City and Company

shall meet and confer and mutually agree on revised obligations under Sections 3.8 and 8.3.

3.11 Status of Disposal Site

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

3.12 Dedicated Routes

Solid Waste Collected in City may not be commingled in Collection vehicles with Solid Waste from other jurisdictions. All routes shall be dedicated exclusively to City of Manhattan Beach Solid Waste. Company may request permission from City for an exception on a case-by-case basis.

3.13 Route Audit

Once during the first year and every third year thereafter following the Commencement Date, Company shall conduct an audit of its Collection routes in City. The route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver or route supervisor of each Residential and Commercial Customer in City. The route audit information shall include, at a minimum, the following information for each account:

For Residential Cart Customers:

- Route Number;
- Truck Number;
- Number and size of Carts by waste stream (Trash, Recycling, Green Waste);
- Service Address; and,
- Cart condition.

For Commercial and Multi-Family Bin Customers:

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

Within 30 days after the completion of the route audit, Company shall submit to City a report summarizing the results of the route audit. One copy shall be submitted to the Public Works Director and one to City's billing manager. This summary shall include:

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

- Percentage of the “net” change in monthly billing as a result of the audit to the total pre-audit monthly billing; and,
- Percentage of the “absolute” change in net monthly billing as a result of the audit to the total “pre-audit” monthly billing.

The report shall include a description of the procedures followed to complete the route audit. This description shall include the names and titles of those supervising the route audits and the name and titles of those performing the observations. Additionally, the report shall include a description of the pre-audit training of the route auditors, particularly if temporary personnel are used.

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

3.14 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from any Customer, Company shall notify the Customer in writing, at the time Collection is not made, through the use of a “tag” or otherwise, of the reasons why the Collection was not made.

B. Hazardous Waste Inspection and Reporting. Company reserves the right to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste and the right not to Collect Hazardous Waste put out with Solid Waste. Company shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within City. In addition to other required notifications, if Company observes any substances that it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Company will immediately notify the Public Works Director or the Public Works Director’s designee.

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

3.15 Hazardous Waste Management Component

Company shall maintain a Hazardous Waste Management Plan describing procedures for handling hazardous waste identified in Solid Waste Collected and make it available to City upon request.

3.16 Disposal and Facility Capacity Guarantee

Company guarantees capacity for all Solid Waste Collected under this Agreement for the Agreement term at Company's following Facilities: Athens City of Industry Materials Recovery Facility, Crown Recycling Services (Los Angeles). Company guarantees capacity for the Organics Waste programs at the following Facilities: American Organics.

ARTICLE 4

OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Company Billing

Company shall bill for the services as listed in subsections A, B, and C below.

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

B. Roll-off Box and Temporary Bin Services.

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

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

C. Residential and Commercial Services. City reserves the right to require Company to perform billing service for Residential and/or Commercial Customers upon 90 days' written notice. Should Company perform the customer billing, Company shall be compensated with a 2.0% rate adjustment to the residential rates and 0.5% rate adjustment to the Commercial, Roll-off, and temporary Bin rates.

4.1.2 City Billing

[NOTE: IF COMPANY TAKES OVER ALL OR A PORTION OF CITY BILLING PER 4.1.1.C, ADDITIONAL LANGUAGE WILL BE REQUIRED.]

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

4.1.3 Company Compensation

City shall pay Company on a monthly basis, within 30 days of City billing Customers. Payment will be based on City's records of services rendered and will be subject to subsequent audit and adjustment in succeeding invoices. Payment will be accompanied by Customer and service level list (see Section 4.1.4 below). The Company Compensation rates exclude any amounts that may be added by City to Customer invoices for City to recover its administrative costs.

4.1.4 Company Responsible for Service Level Accuracy

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

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

4.1.5 Billing Records

Company shall maintain copies of Company Billings and receipts, each in chronological order, for a period of five years after the date of service for inspection by City upon request. Company may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and

retrieved for inspection and verification in a timely manner, are sufficient to verify accuracy of Franchise fees owed to City, and may be produced in a form and manner sufficient to establish the existence of Customer obligations in a court of competent jurisdiction.

4.1.6 Suspension of Service Due to Non-Payment

[TO BE UPDATED IF COMPANY TAKES OVER ALL OR A PORTION OF CITY BILLING.]

For Customers billed by Company, once a payment is 30 days past due, Company shall send Customers a notice that service will be suspended if payment is not made within an additional 30 days. Service may only be suspended after these minimum time periods and notice. City will not be responsible for or assist with the collection of delinquent accounts.

4.1.7 Late Fees

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

4.1.8 Franchise Fee

A. Amount.

In consideration of the exclusive Franchise granted pursuant to this Agreement, and in the event that Company assumes billing of Customers, Company shall pay to City a Franchise fee equal to a percentage of Company's rate revenue received for Customers billed by Company. This fee shall be determined by City and included in the approved rates billed by Company. Company shall remit this fee to City as set forth below.

B. Time and Method of Payment.

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

4.2 Customer Service

4.2.1 Office Hours

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

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

4.2.2 Missed Pick-ups

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

4.2.3 Complaint Documentation

All service complaints shall be directed to Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of 24 months and shall be available to City at all times upon request. A summary of complaints shall be submitted to City monthly.

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

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

4.2.4 Resolution of Customer Complaints

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

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

4.2.5 Government Liaison

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

The Government Liaison shall be the community relations liaison for Manhattan Beach business, residential, and school and municipal issues for continuous and consistent collaboration with City and Customers, including his/her physical presence when requested or appropriate at schools, businesses and business organizations, community events, City Council meetings and workshops, et al.

4.2.6 Service Liaison

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

4.2.7 Customer Service Liaison

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

4.2.8 School Outreach Liaison

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

4.3 Education and Public Awareness

4.3.1 Manhattan Beach Zero Waste Outreach Program

Company acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to significantly exceed AB 939 requirements. Accordingly, Company agrees to implement a public education plan, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods acceptable to City. Any outreach material utilizing paper, provided and distributed by Company, shall be made from recycled-content paper and must be labeled "Printed on Recycled Paper" on the outreach material. Company shall cooperate fully with City in this regard. Company shall submit the public education plan for review by City at least 60 days prior to the Commencement Date of the Agreement. The approved public education plan shall be incorporated as Exhibit 2 into this Agreement.

Company shall maintain its own program of providing information relevant to billing and Solid Waste services, issues and needs, to all of its Customers. Company shall

assist City in maintaining its Multi-Family mailing list for all Multi-Family dwelling units by reporting changes in Multi-Family Customers and providing addresses of each new or eliminated dwelling unit to City. All public education materials shall be approved in advance by City. All printed materials shall be printed on recycled paper.

4.3.2 Implementation and On-going Education Requirements

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

- **Initial Cart Selection Mailing** – Company shall prepare and distribute the notification described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** – At least 30 days prior to the Commencement Date, Company will prepare and mail, using City-provided labels, an initial mailing to Residential and Commercial Customers explaining the transition from the existing programs to the new programs. The mailing will describe program changes, route changes, dates of program implementation, and other necessary information. For Residential Cart Customers, this mailing will be in addition to the initial mailing requesting Cart Customers to select Cart sizes and numbers.
- **Web-based Program Catalogue** – Company shall be required to develop and provide updated information details for each program to City in an “e-book” or “e-magazine” format, or a dedicated website for City programs, or an alternative format only if approved in advance by City (not PDF), ready for addition to City's and Company's websites. Company shall update this based on any program, service or date changes.
- **Instructional Packet Accompanying Company-Provided Containers** – An information packet shall be attached to each set of Carts distributed to a Customer. Packet should describe available services, including how to place Carts for Collection, which materials should be placed in each Cart, Collection holidays, and a Customer service phone number.

- **Semi-Annual Brochures** – The semi-annual brochure shall be four pages, and in full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. These brochures shall be prepared and direct-mailed by Company twice per year (total of four brochures per year) for each year in which this Agreement is in effect, using City-provided mailing labels.
- **Quarterly Notices** – Company is responsible for preparing notices promoting and explaining programs (such as Recycling, Green Waste, Holiday Tree and Bulky Item Collections, free Commercial Recycling, and proper Household Hazardous Waste Disposal) and Collection schedules, including holiday schedules, at least quarterly to all Customers, at City's request and with City's review and approval of the materials. Notices will be mailed by City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from City is Company's responsibility.
- **Annual Notifications of Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the Commercial Recycling program available to them. Notification will be mailed by City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from City is Company's responsibility.
- **Corrective Action Notice** – For use in instances where the Customer sets out inappropriate materials.
- **Company Representative** – Company shall provide a representative able to visit civic groups, school assemblies, homeowners' associations, building managers, the Chamber of Commerce, and Commercial businesses to promote and explain the Recycling programs, and participate in demonstrations, parades and civic events.

- **SB 1383 Education and Outreach** – Company shall provide additional education and outreach in accordance with the CalRecycle requirements under SB 1383.

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

4.3.3 Contract Launch Campaign

In addition to Initial Mailings, Web-Based Programs Catalogue and Instructional Packets required under Section 4.3.2 above, prior to initiation of services under this Agreement, Company will conduct a minimum of two residential public workshops, with at least one on a weekend, and present at a Chamber of Commerce meeting/event describing program changes, route changes, dates of program implementation, and other necessary information. Company will display new Carts to be distributed. Residential workshops shall be conducted at a facility to be determined by City.

4.3.4 Zero Waste Community Events

At the direction of City, Company shall participate in and promote Recycling, zero waste, waste reduction, and other diversion techniques at City Owned/Managed Events. Such participation would normally include providing, without cost to City, educational information promoting the goals of City’s Zero Waste programs.

4.3.5 Use of “Manhattan Beach Recycles” Program Name

The program name “Manhattan Beach Recycles” refers to all Solid Waste management services available to the residents of City. This name is the exclusive property of City. City confers a revocable license to Company to use “Manhattan Beach Recycles” to help people identify with the civic pride and environmental good of responsibly managing solid waste. Company’s use of the name does not relieve Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement.

Company's use of the name is not to be construed as constituting an arrangement by City for the Disposal of Solid Waste, nor to create an agency relationship.

4.3.6 Multi-Family Recycling Outreach Program

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

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

Company commits a minimum of 400 hours of Company staff, or third-party contractor, time per year towards meeting Multi-Family outreach efforts as described in this section. Company meetings with internal staff and/or City cannot be used as part of the 400 -hour commitment.

4.3.7 Commercial Outreach Recognition Program

Company commits a minimum of 600 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

Green Business Certification Program

Company will work with City, the Chamber of Commerce, the Downtown Manhattan Beach Business Association, and the North End Business Improvement District to certify and recognize Manhattan Beach businesses making sustainable changes to business practices to become a Zero Waste Business through the California Green Business Network (CAGBN) of which City is a member. Company will create a standard outreach material piece for canvassing and distribution annually and the program must be promoted on the Company's website for City. The program manager shall be selected by City at the Company's expense. The program manager will be responsible for a minimum of 100 hours annually toward this program and achieve at minimum of 10 newly certified businesses and 5 recertification's annually. These hours can be utilized as part of the Commercial Outreach Hours required in Section 4.3.7 (Commercial Outreach Recognition Program). Both the hours logged hours and the names of the businesses new certified and recertified will be included in the hauler's monthly reporting to City. Staff meetings between the program manager and City or Company cannot be included toward the 100 minimum hours, only hours specifically reaching out, working with, and certifying or recertifying businesses are applicable toward the 100 hour annual minimum. The California Green Business Program will promote the following:

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;

- Help improve indoor air quality and reduce smog formation; and,
- Educate businesses and their customers and employees about green business practices.

To participate, businesses must be located within the City and complete a CAGBN checklist of essential criteria and a third-party audit will be performed by the program manager and participating utility partners.

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

The program shall be provided at no additional charge.

Zero Waste Green Works – Promoting Recycling at the Work Place

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

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

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

4.3.8 School Zero Waste Outreach Program

Company shall provide the following services to all City schools, including the Manhattan Beach Unified School District, preschool centers, and private schools, to

promote waste reduction. The following programs will be implemented by Company to the fullest extent possible, based on the individual school's willingness to participate.

- Classroom, lunch area, cafeteria, and administrative Recycling Containers and Organics Waste Containers to be provided and replaced as needed;
- Source separated Recyclables and Organics Waste shall be Collected from the schools at no charge;
- Conduct a minimum of one assembly promoting Recycling at each school in City each year;
- Education and training on proper Recycling and waste reduction techniques to students and teachers and web-based resources for the district and schools' websites;
- A kickoff event at the beginning of each school year for schools that request it as well as end of school year recycling programs as requested;
- Provide school assemblies and classroom presentations, including composting classes, aimed at educating and promoting recycling at school and home;
- Provide training and ongoing consultation of proper waste reduction techniques for school staff and volunteers;
- Create an annual awards and incentive programs to promote on-campus sustainability program;
- Conduct annual CRV fundraising campaigns;
- Proper signage for all school sites;
- Provide teachers with sample lesson plans and activity sheets made from recycled paper and labeled "Made from Recycled Paper" on relevant topics on an as requested basis; and,

- Contact each school at least once per semester to offer all services included in this section. City or the school may request that more frequent contacts be made. Records of contact attempts shall be retained and submitted to City annually. Records shall include name and position of person contacted, date and time of contact, and, if contact declines to conduct an assembly and participate in the other services offered under this section, the reason for decline. To enhance the likelihood of conducting assemblies and providing other Recycling support at schools, Company shall make an effort to work with other organizations promoting Recycling and environmental education in schools.

If requested, Company will work with school administration, parent volunteers, and janitorial staff to review current Recycling practices and look for opportunities for program enhancement. Company will provide follow-up with school management, janitorial staff, faculty and student volunteers to ensure that improved Recycling and waste reduction techniques have been implemented.

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

Re-Use Lunch Kits – Company shall provide reusable lunch kits to each first grader in the Manhattan Beach Unified School District each year. Company will purchase these kits from a local company approved by City to support the local economy. These kits shall be provided at no additional cost.

4.3.9 Mandatory Compliance and Outreach for State Regulations

Company shall assist City in gathering required Customer data, performing site visits, public outreach, and other requirements in order to comply with State requirements and regulations such as Mandatory Commercial Recycling and Mandatory Organics Recycling, and control of short-lived climate pollutants. The parties acknowledge that CalRecycle is in the process of implementing SB 1383 (Public Resources Code Section 42652 et seq.), which establishes targets to achieve a 50 percent reduction in the level of

the statewide disposal of Organic Waste from the 2014 level by 2020 and a 75 percent reduction by 2025. The law grants CalRecycle the regulatory authority required to achieve the organic waste disposal reduction targets and establishes an additional target that not less than 20 percent of currently disposed edible food is recovered for human consumption by 2025. Company commits a minimum of 400 hours of Company staff, or third-party contractor, time per year towards meeting mandatory compliance and outreach for State regulations. Company meetings with internal staff and/or City cannot be used as part of the 400 -hour commitment. The 400-hour minimum commitment for State Regulations is separate from the 600-hour commitment mentioned in Section 4.3.7.

4.3.10 Reallocation of Hours

Company may request approval from City to reallocate the minimum guaranteed hours among the three sectors, Multi-Family, Commercial and School outreach. Upon advance written approval from City, approval over which City has sole discretion, Company may reallocate hours.

4.3.11 Recycling and Take-Back Programs

Manhattan Beach City Staff Programs – Company will support City staff programs that support waste reduction such as beach cleanups, composting classes, and supply donations of gloves, bags and give-a-way items.

Plastic Bag/Film – Company shall establish a plastic-bag take back collection program at a minimum of two grocery stores within the City, at no additional cost. Company shall establish a drop-off procedure and provide an in-store container with each grocery store. Company shall provide a three yard bin for plastic bag collection and a two yard bin for film collection, both with a locked lid, at each of the locations. Company is responsible for the collecting, baling, and recycling of the material. Tonnage collected under this program will be reported as a separate line item in the monthly report to City.

Shred Event – Company will promote and conduct a shred day twice per year, whereby Residents and businesses can deliver paper for confidential shredding. Company must provide onsite and offsite trucks at event so that if the onsite shredding truck fills up during event hours there is a truck accepting offsite shredding documents for participation. Each shred event must take place for a minimum of three consecutive hours.

Synthetic Carpet Program – Company will offer a curbside program whereby Company will Collect and Recycle synthetic carpet, cut and rolled for Collection by one driver from Customer's Residential or Commercial premises. In addition, City has the option to request that Company provide a locked storage Container at a City facility for Customers to drop-off synthetic carpet. This program will be provided at no additional cost to City or ratepayer.

Donation Box – If requested by City, Company will place a tamper-free donation box at a City facility for Customers to drop off donation items to be determined by City and Company at the time of project implementation. Company will Collect donations for redistribution. City staff would be responsible for accepting donations and calling for Company pickup if City requests this service. Company will track and report tonnage diverted and disposed through this program.

Textiles/Clothing– Company shall establish a take-back and/or drop-off system for Residential and Commercial Customers to donate garments and other textiles for reuse and Recycling, subject to the items being recyclable. Company will identify where the specific textile waste streams are coming from, what types of products, materials, qualities, and quantities are being discarded within the City, and will evaluate donation drop-off points throughout the community. Company will evaluate whether a textile donation collection event would be successful. Company will also post educational material on Company's website and other external communication tools that Company will disseminate in the community.

Take-Back Program Assistance – Company shall assist in promoting take-back programs within the City, including unwanted medications and battery recycling.

4.3.12 Construction Waste Disposal Assistance

Company will provide consultations to contractors requesting Construction and Demolition Waste services on earning points towards LEED certification.

4.4 Waste Generation/Characterization Studies

Company acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939.

Company agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed, by Customer type (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939. Company will at its sole expense conduct such a waste generation and characterization study upon request of City or reimburse City its actual costs to contract for a third-party to perform a waste generation/characterization study, but not more than once every two years.

4.5 Grant Writing

Company will assist City with grants by actively seeking, writing, and managing grants, and reporting grant funds at no additional cost.

ARTICLE 5

COMPANY COMPENSATION AND RATES

5.1 General

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

Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at rates that do not exceed maximum rates fixed by City from time-to-time.

5.2 Initial Rates

The maximum rates shown in Exhibit 3 are the rates proposed by the Company and are valid through June 30, 2020. The start of service is scheduled for July 1, 2020. Therefore, the rates in Exhibit 3 will be adjusted prior to the start of service, to be effective July 1, 2020, using the procedure described in Section 5.3. Company will provide the services required by this Agreement, receiving no more than Company Compensation authorized by Exhibit 3, except as provided herein and in Section 5.3.

5.3 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2020, and for all subsequent Rate Years, Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, based on the method of adjustment described in Section 5.4. Company shall submit its request in writing, to be received by City via personal delivery or certified mail, at least 90 days prior to the start of the new Rate Year. Failure to submit a written request at least 90 days prior to the start of the new Rate Year shall result in Company waiving the right to request such an increase for the subsequent year.

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

The rate adjustments shall apply to the Company Compensation rates included in Exhibit 3.

5.4 Method of Adjustments

5.4.1 General

For Rate Years beginning July 1, 2020, Company may request an adjustment to Company Compensation for all rate categories included in Exhibit 3 according to the method described below and the formulas shown in Exhibit 4, subject to review and approval of City. All future adjustments are to be effective July 1 of the same year, subject to the provisions of Section 2.8.

5.4.2 Rate Adjustment Calculation

The approved Company Compensation shall be based upon the percentage change in the average annual published Consumer Price Index ("CPI"), for Trash and Garbage Collection (CUUR0000SEHG02), U.S. City average, as published by the United States Department of Labor, Bureau of Labor Statistics, between the calendar year ended the December prior to the Rate Year anniversary date, and the calendar year ended the prior December. For example, for the first rate increase effective July 1, 2020, the change in indices shall be measured as the percentage change from the average of the monthly indices for calendar year 2018 to the average of the monthly indices for calendar year 2019. An example calculation is included in Exhibit 4. If the index is discontinued, an alternative index must be approved by the City Manager.

5.5 Extraordinary Adjustments

Company may request an adjustment to maximum rates at reasonable times other than that allowed under Section 5.3 and 5.4 of this Agreement in the event of extraordinary changes in the cost of providing service under this Agreement. Extraordinary rate adjustments may be requested no more than once per year, and if approved, will be implemented at the same time as the next regularly scheduled rate adjustment under Section 5.4 effective July 1. . No adjustments may be made for inaccurate estimates by Company of its proposed cost of operations, unionization of Company's workforce, or change in wage rates or employee benefits.

City will permit an adjustment to the rate based on an increase or decrease in a direct per ton surcharge assessed at the Disposal site or transfer station by federal, State or local regulatory agencies after the effective date of this Agreement, to the extent the percentage change in these adjustments exceed the cumulative percentage change in the total rate granted under Section 5.4 since the Commencement Date.

For each request for an adjustment to the maximum rates that Company may charge Customers brought pursuant to this section, Company shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Company in preparing the estimate. Company shall also submit a schedule showing how its total costs and total revenues have changed over the past three years for the services provided under this Agreement. City may request a copy of Company's annual financial statements in connection with City's review of Company's rate adjustment request. City may review tonnage reports and all other applicable documentation to determine the accuracy of the rate adjustment request, including the tonnage to which it applies, the impact on Customer rates, the possible reweighting of the Disposal component and any other issues City determines to be relevant to this review.

City shall review Company's request and, in City's sole judgment and absolute discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the

adjustment, subject to the provisions of Section 2.8. City may consider increases or decreases in Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

ARTICLE 6

REVIEW OF SERVICES AND PERFORMANCE

6.1 Performance Hearing

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

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

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

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

Topics for discussion and review at the Solid Waste Services and Performance Review Hearing shall include, but shall not be limited to, services provided, route audit results, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for significantly exceeding AB 939's goals, regulatory constraints, and Company's performance. City and Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

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

6.2 Performance Satisfaction Survey

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

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

Company shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Company agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with Applicable Laws and regulation and to meet the reporting and Solid Waste program management needs of City, and in particular, reporting obligations imposed by AB 939. To this extent, such requirements set out in this and other Articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this Article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Company in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

Company shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up. All records shall be maintained for five years, and the last five years of records shall be maintained for an additional three years after the expiration of this Agreement.

Company agrees that its records and any of all its affiliates or subcontractors conducting operations addressed in this Agreement shall be provided or made available to City and its official representatives during normal business hours. City may review or utilize any of the records described in this section for any purpose whatsoever. Failure to provide the records may be considered a material breach of this Agreement.

7.2.2 Financial Records

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

7.2.3 Solid Waste Service Records

Records shall be maintained by Company for City relating to:

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

7.2.4 CERCLA Defense Records

City views the ability to defend against the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, City regards the

ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. Company shall maintain data retention and preservation systems which can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of the reports required in Section 7.3 for five years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to City. Company shall continue to retain records required to be retained under the previous agreement in accordance with this section for five years after the term during which Collection services are to be provided pursuant to this Agreement. Company agrees to notify City's Risk Manager and City Attorney at least 90 days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

7.2.5 Other Programs' Records

Records for other programs shall be tailored to specific needs. In general, they shall include:

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

7.2.6 Biennial Audit

Company shall fund biennial audits as described below. The scope of the audit and auditing party will be determined by City; and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, gross receipts, tonnage, calculation of Net Recycling Revenue under Section 3.2.7, and verification of Diversion rate. The first audit to be performed after July 1, 2021, will be based on Company's reports and records for the period from the start of the Agreement through June 30, 2021, and may be conducted as soon as relevant data, such as tonnage, is available. Audits will be performed every other year thereafter (the

biennial audit). City's Public Works Director shall select the auditor and manage the audit, and Company shall pay the auditor's invoice, up to \$80,000.00 for the first audit, and \$50,000.00 for each subsequent biennial audit (in 2020 dollars). The \$50,000.00 amount in subsequent years shall be increased annually by the change in CPI from June 2020 to the June CPI index preceding the audit. For example, the cost of the first audit would be \$80,000. The second audit, to be performed after June 30, 2023, would be calculated as follows:

$$\frac{\text{June 2023 CPI}}{\text{June 2020 CPI}} \times \$50,000$$

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

7.2.7 Payments and Refunds

[TO BE UPDATED DEPENDING ON WHETHER COMPANY TAKES OVER RESIDENTIAL AND/OR COMMERCIAL BILLING RESPONSIBILITY.]

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

7.3 Reports

7.3.1 Report Formats and Schedule

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Reports are intended to compile recorded data into useful forms of information that can be used to, among other things:

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

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

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

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

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

7.3.2 Monthly Reports

The information listed shall be the minimum reported:

- a) Solid Waste Collected by Company for each month, sorted by type of solid Waste (Trash, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Roll-off) in tons, and the facilities where the tons were processed or disposed. Bulky Waste items shall be separately reported.
- b) Materials Recovered. Statement showing kinds of material and quantity sold (in tons).
- c) Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of Residential and Commercial Food Waste Diversion Program Participants, if applicable.
- f) Commercial tons processed and recovered through Commercial mixed waste processing.
- g) HHW Collected.
- h) Summary of missed pickups per Section 4.2.2.
- i) Summary of complaints per Section 4.2.3.
- j) Report of contacts, visits and results of Multi-Family Customer visits in accordance with Section 4.3.6.
- k) Bulky item collection report stating number of items collected, reused, recycled, and landfilled, in accordance with Section 3.1.5.
- l) Commercial recycling site visits summary, including the name and address of Customer, the date of the visit and the contact name and phone number,

demonstrating that the required visits have been made, and reason provided for not establishing a recycling program, in accordance with Section 3.2.2.

- m) List of Commercial and Multi-Family Customers that do and do not participate in an organics program, whether the Organics program is provided by Company or another party, and whether the program is for Food Waste or Green Waste (such as a landscaper that composts or otherwise diverts Organic Waste);
- n) Which Customers are required to participate in an Organics Recycling program per Public Resources Code Section 42649.81;
- o) Commercial and Multi-Family Customers participating in food recovery programs;
- p) Commercial and Multi-Family Customers using third-party recycling; and,
- q) Mandatory Commercial Recycling MCR and Mandatory Organics Recycling (MORE) Activities Worksheet in the form attached as Exhibit 10, and any future SB 1383 worksheets provided by CalRecycle.
- r) Additional information that may be requested by CalRecycle or City related to Recycling and Organics programs, including but not limited to compliance activities related to SB 1383.

7.3.3 Quarterly Reports

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

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

7.3.4 Annual Report

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

- a) A complete inventory of equipment used to provide all services (such as vehicles and Containers by size and waste stream type Container is used for).
- b) Results of route audits, including a summary of the number of Bins by size and service level, Cart counts by size (20-, 35-, 65-, or 95-gallon) and type of service (Trash, Recycling, Green Waste, and Residential versus Commercial), and Roll-off Box pulls per month by material type.
- c) CERCLA Defense records required under Section 7.2.4.
- d) General information about Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of Company and its subsidiaries and affiliates, and of other entities that may perform services under this Agreement, as City may request.
- e) Copy of Hazardous Waste diversion records showing types and quantities, if any, of Hazardous Waste that was inadvertently Collected, but diverted from landfilling.
- f) Number of routes and route hours per day by type of service.
- g) List of customers and service levels of the customers participating in the MCR programs in compliance with MCR Requirements, and list of customers and service levels not in compliance with MCR Requirements.
- h) List of customers and service levels of the customers participating in the MORE programs in compliance with MORE Requirements, and list of customers and service levels not in compliance with MORE Requirements.
- i) Dates and details of site visits to customers not in compliance with MCR, MORE, or SB 1383 Requirements.

7.3.5 Financial Report

City may, at City's option, request Company's financial reports/statements for the most recently completed fiscal year in connection with Company's performance or obligations under this Agreement, including a rate adjustment, performance audit, billing audit, or verification of other information required under this Agreement.

Financial statements shall include a supplemental combining schedule showing Company's results of operations, including the specific revenues and expenses in connection with the operations provided for in this Agreement, separated from others included in such financial statements. The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles ("GAAP") and audited, in accordance with Generally Accepted Auditing Standards ("GAAS") by a certified public accountant ("CPA") licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost for preparation of the financial statements and audit shall be borne by Company as a direct cost of service. Company may provide to City the supplemental schedule on a compiled basis.

Company shall, in its agreement with the CPA preparing the audit above, have its CPA make available to City (or City's designated representative) such CPA's working papers related to the audit. The cost, if any, incurred by Company's CPA shall be included in the cost of the audit.

At City's request, Company shall provide City with copies of working papers or other documentation deemed relevant by City relating to information shown in the disclosure letter. The disclosure letter shall be provided to City.

7.4 Adverse Information

A. Reporting Adverse Information. Company shall provide City two copies (one to the City Manager and one to the City Attorney) of all reports, pleadings, applications, notifications, Notices of Violation, communications or other material relating specifically to Company's performance of services pursuant to this Agreement,

submitted by Company to, or received by Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, State or local agency, including any federal or State court. Copies shall be submitted to City simultaneously with Company's filing or submission of such matters with the agencies. Company's routine correspondence to the agencies need not be routinely submitted to City, but shall be made available to City promptly upon City's written request.

B. Failure to Report. The refusal or failure of Company 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 Company in such report shall be deemed a material breach of this Agreement as described in Article 10 and shall subject Company to all remedies which are available to City under this Agreement or otherwise.

7.5 Right to Inspect Records

City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Company or its related party entities that City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and Company's performance provided for in this Agreement. Failure to make such records readily available shall be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

Company hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) including attorney's fees arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Company, its officers, employees, agents, affiliates and/or subcontractors in performing services under this Agreement; (2) the failure of Company, its officers, employees, agents, affiliates and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Company, its officers, employees, agents, affiliates and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees negligence, but shall not extend to matters resulting from the Indemnitees sole or active negligence, willful misconduct or breach of this Agreement. Company further agrees to and shall, upon demand of City, at Company's sole cost and expense, defend (with attorneys acceptable to City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events.

Company, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the Indemnitees, in any claims or actions by third

parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material" or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or State laws to provide Solid Waste services in City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. City and Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event City and Company jointly agree to appeal, or to oppose any appeal, City and Company agree to share equally the costs of appeals. Should either City or Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or to oppose an appeal, the party which decides to appeal, or to oppose an appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

Company's duty to indemnify and defend from the aforementioned events arising during the term of this Agreement and as it may be extended shall survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

Company shall defend with counsel reasonably acceptable to City, indemnify, protect and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limit any and all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorney's fees for the adverse party and expenses (including without limit attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of Company, its officers, directors, employees, affiliates or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any

repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance, Hazardous Waste, Household Hazardous Waste, Solid Waste, and/or other waste that has been generated, Collected, stored, transported, or disposed in City. The foregoing indemnity is intended to operate as an agreement pursuant to § 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. § 9607(e), Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq., and California Health and Safety Code § 25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and shall survive the end of the term of this Agreement. The liability of Company pursuant to this Section 8.2 is not limited to the limits of the policies of insurance provided pursuant to Section 8.4.

If City exercises its option under Section 3.10, in writing, to direct Trash to another landfill that is not owned or operated by Company or its affiliates, then this indemnity shall not apply to that portion of the waste that City has redirected.

8.3 AB 939 Indemnification

Company shall indemnify and hold harmless City from and against all fines and/or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirement of AB 939, are not met by City with respect to the waste stream Collected under this Agreement. Company's indemnification of City is subject to all of the following restrictions:

- a. Company's obligation to indemnify City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of City to establish and maintain a source reduction and recycling element pursuant to Section 41000 et seq. of the Public Resources Code.
- b. No payment required under Company's obligation to indemnify City may exceed that portion of any penalty assessed by the Board against City that was attributable to Company's breach of or noncompliance with an express obligation or

requirement. Further, Company shall not be liable under the indemnity obligation to the extent that Company's breach or non-compliance resulted from City's action or failure to act, determined as a result of judicial review, hearing or appeal to CalRecycle.

8.4 Insurance

Company shall procure and maintain during the entire term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Company's performance hereunder or the actions or inactions of any of Company's officers, agents, representatives, employees, or subcontractors in connection with Company's performance. City does not, and shall not, waive any rights against Company which it may have by reason of the hold harmless agreements, because of acceptance by City or the deposit with City by Company of the insurance policies described in this section. The insurance required is in addition to and separate from any other obligations contained in this Agreement.

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

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 1996 or later).
2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

B. Minimum Limits of Insurance. The Company shall maintain in force for the term of this Agreement limits no less than:

1. General Liability: \$10,000,000.00 limit aggregate and \$5,000,000.00 limit per occurrence, for bodily injury, personal injury and property damage per year. If Commercial General Liability insurance or other form with a

general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: \$5,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or Company shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of such deductibles or self-insured retentions.

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

1. General Liability and Automobile Liability Coverages
 - a) City of Manhattan Beach and its officers and employees are to be named as additional insureds by policy endorsement as respects: liability arising out of activities performed by or on behalf of Company; products and completed operations of Company; premises owned, leased or used by Company; or vehicles owned, leased, hired or borrowed by Company. The coverage shall contain no additional limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by City.

- b) Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Company's insurance and shall not contribute with it.
 - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Indemnitees.
 - d) Coverage shall state that Company's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e) The automobile liability policy shall be endorsed to delete the Pollution and/or the Asbestos exclusion and add the Motor Carrier Act endorsement (MCS-90), TL 1005, TL 1007 and/or other endorsements required by federal or state authorities.
- 2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by Company for City.
 - 3. All Coverages - Each insurance policy required by this section shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

E. Acceptability of Insurers. The insurance policies required by this section shall be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of A.M. Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

F. Verification of Coverage. Company shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time. City will attempt to maximize confidentiality of the policies to the extent permitted by law.

Renewal certificates will be furnished periodically to City to demonstrate maintenance of the required coverage throughout the term.

G. Companies and Subcontractors. Company shall include all other companies and subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors shall be subject to all of the requirements stated herein.

H. Required Endorsements.

1. The Workers' Compensation policy shall contain an endorsement in substantially the following form:

"Thirty days prior written notice by certified mail (ten days in the event of cancellation for non-payment), return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

2. The Public Liability policy shall contain endorsements in substantially the following form:
 - a) "Thirty days prior written notice (ten days in the event of cancellation for non-payment) shall be given to City in the event of

cancellation, reduction in coverage, or non-renewal of this policy.
Such notice shall be sent to:

Risk Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

- b) “The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy.”
- c) “This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only.”
- d) “Inclusion of City as an insured shall not affect City’s rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase the Company’s liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured.”

I. Other Insurance Requirements.

- 1. Company will establish an insurance policy repository and maintain copies of insurance policies required pursuant to this Agreement for 100 years after the end of the term during which Collection services are to be provided pursuant to this Agreement. Company shall notify City’s Risk Manager and City Attorney before destroying copies of such policies.

This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

2. In the event any services are delegated to another company or subcontractor, Company shall require such company or subcontractor to provide statutory Workers' Compensation insurance and employer's liability insurance for all of the other company or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section shall cover all company or subcontractors or the company or subcontractor must furnish evidence of insurance that meets all of the requirements of this section.
3. Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against Company or any company or subcontractor on account of any occurrence related to this Agreement, Company shall promptly report the facts in writing to the insurance carrier and to City.

If Company fails to procure and maintain any insurance required by this Agreement, City may take out and maintain, at Company's expense, such insurance as it may deem proper and deduct the cost thereof from any moneys due Company.

8.5 Performance Bond

8.5.1 Performance Bond Required.

Concurrently with execution of this Agreement, Company shall deliver to City a performance bond, from an admitted surety insurer with an A.M. Best rating of not less than A-, in the amount of \$500,000.00 substantially in the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any liquidated damages and the funding of any work to cure a

breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional, continuously renewed, and remain in force during the entire term of this Agreement and for the period specified in subsection 8.5.3, and shall be null and void at the conclusion of that period only if Company promptly and faithfully performs all terms and conditions of this Agreement.

8.5.2 Forfeiture of Performance Bond.

In the event Company shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare a portion or all of the performance bond which is necessary to recompense and make whole City, forfeited to City. Upon partial or full forfeiture of the performance bond, Company shall restore the performance bond to its face amount within 30 days of City's declaration. Failure to restore the performance bond to its full amount within 30 days shall be a material breach of contract.

8.5.3 Duty to Maintain Beyond Service Term.

Some Agreement requirements extend beyond the term and other requirements, such as minimum Diversion rates per Section 3.8, will not be substantiated until after the final service date. Therefore, Company shall not terminate the performance bond, and will renew it to ensure continuous availability to City, until receiving a written release from City. Any performance bond will automatically expire at the end of 18 months after the end of the term unless City has notified Company in writing as to a specific contractual area of concern yet to be resolved, instructing Company to retain the bond. Neither permission from City to discontinue holding this bond, nor permitted expiration after 18 months, shall relieve Company of payments to City that may be due, or may become due.

8.6 Property Damage

Any physical damage caused by the acts or omissions of employees of Company to public or private property shall be promptly repaired or replaced by Company at Company's sole expense.

8.7 Pavement Damage

Company shall be responsible for the cost to repair any damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by Company's, or Company's subcontractor's, vehicles or employees. Company understands that the exercise of this Franchise may involve operation of its Collection vehicles over private roads and streets. Disputes between Company and its service recipients as to damage to private pavement are civil matters and complaints of damage will be referred to Company as a matter within its sole responsibility and as a matter within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

In addition to, but not in lieu of, any other rights or remedies City might have under this Agreement, at law or in equity, in the event that Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste as required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than 72 hours, and if, as a result thereof, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that City should find that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, upon notice to Company during the period of such emergency as determined by City, as hereinafter set forth, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Company; and/or (2) to take possession of any or all of Company's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within City which Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Company within one Business Day of the oral notification.

Company further agrees that in such event:

A. It will take direction from City to effect the transfer of possession of equipment and property to City for City's use.

B. It will, if City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain the property in operational condition.

C. City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Company. Company further agrees, if City so requests, to furnish City the services of any or all management or office Personnel employed by Company whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the billing and Collection of fees for these services.

City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 10.5, City shall pay to Company the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Company has rendered bills in advance of service, for the class of service involved.

9.2 Billing and Compensation to City During City's Possession

During such time that City is providing Solid Waste services, as above provided, City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. Company further agrees that, in such event, it shall reimburse City for any and all costs and expenses incurred by City beyond that billed and received by City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Company of each statement listing such costs and expenses, but in no event later than five Working Days from and after each such submission.

9.3 City's Right to Relinquish Possession

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Company and thereupon demand that Company resume the Solid Waste services as provided in this Agreement, whereupon Company shall be bound to resume the same.

9.4 City's Possession Not A Taking

City's exercise of its rights under this Article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Company; and (3) does not exempt Company from the indemnity provisions of Article 8, which are meant to extend to circumstances arising under this section, provided that Company is not required to indemnify City against claims and damages arising from the sole negligence of City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time City has taken possession of such vehicles.

9.5 Duration of City's Possession

City's right pursuant to this Article to retain temporary possession of Company's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Company, or when City no longer reasonably requires such property or equipment. In any case, City has no obligation to maintain possession of Company's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Company.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

All provisions of this Agreement to be performed by Company are considered material. Each of the following shall constitute an event of default.

- A. Fraud or Deceit or Misrepresentation.** If Company engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.
- B. Insolvency or Bankruptcy.** If Company becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Coverage.** If Company fails to provide or maintain in full force and effect the insurance required by this Agreement.
- D. Violations of Regulation.** If Company violates any orders or filings of any regulatory body having jurisdiction over Company or City relative to the performance of this Agreement, provided that Company may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to Company is entered.
- E. Failure to Perform.** If Company ceases to provide Collection, processing or Recycling services as required under this Agreement over all or a substantial portion of its Franchise area for a period of two consecutive days or more, unless excused per Section 10.5.
- F. Failure to Pay.** If Company fails to make any payments required under this Agreement and/or refuses to provide City, within ten days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.

G. Acts or Omissions. Any other act or omission by Company related to performance under this Agreement which violates the terms, conditions, or requirements of this Agreement, the California Integrated Waste Management Act of 1989, any Applicable Law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time set in the written notice of the violation or, if Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if Company should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

H. False or Misleading Statements. Any representation or disclosure made to City by Company in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, which proves to be false or misleading in any material respect as of the time such representation or disclosure is made, whether or not any such representation or disclosure appears as part of this Agreement.

I. Attachment. There is a seizure of, attachment of, or levy on, the operating equipment of Company, including without limits its equipment, maintenance or office facilities, or any part thereof.

J. Failure to Provide Assurance of Performance. If Company fails to provide reasonable assurances of performance as required under Section 10.6.

K. Failure to Use Collection Vehicles Powered by Natural Gas or Vehicles Less Than Ten Years of Age. If Company fails to comply with the vehicle requirements of Section 3.9.2.B.

Company shall be given 72 hours from notification by City to cure any default arising under subsections E, F, I, J, and K above; provided, however, that City shall not be obligated to provide Company with a notice and cure opportunity if Company has committed the same or similar breach within a six-month period. City is not obligated to provide an opportunity to cure a default arising under the other subsections.

10.2 Criminal Activity of Company

Should Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Agreement, or of felonious conduct related to antitrust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, City reserves the right to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. Such action shall be taken after Company has been given notice and opportunity to present evidence in mitigation. The term “found guilty” shall be deemed to include any judicial determination that Company or any of Company’s officers, directors or employees is guilty and any admission of guilt by Company or any of Company’s officers, directors or employees including, but not limited to, the plea of “guilty”, “nolo contendere”, “no contest”, and “guilty to a lesser charge” entered as part of any plea bargain. If this Agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to City pursuant to this Agreement.

10.3 Right to Terminate Upon Default

Upon a default by Company, City shall have the right to terminate this Agreement upon a ten days’ notice if the public health or safety is threatened, or otherwise 30 days’ notice, but without the need for any hearing, suit or legal action.

City’s rights to terminate this Agreement, or to take possession of Company’s facility is not exclusive; and City’s termination of this Agreement shall not constitute an election of remedies. Instead, they shall be in addition to any and all other legal and equitable rights and remedies which City may have.

By virtue of the nature of this Agreement, the urgency of timely continuous and high-quality service, the time required to effect alternative service, and the rights granted by City to Company, the remedy of damages for a breach hereof by Company is inadequate and City shall be entitled in injunctive relief.

10.4 Liquidated Damages

A. General. City finds, and Company agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which shall be incurred by City as a result of a breach by Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (i) substantial damage results to members of the public who are denied services or denied quality or reliable service; (ii) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of this Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) the services provided under this Agreement might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (iv) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties further acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to City and that City has considered and relied on Company's representations as to its quality of service commitment in awarding the Franchise to it. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such non-performance as an event of default under this Article 10, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this

Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that this Agreement was made.

Company	City
Initial Here _____	Initial Here _____

Company agrees to pay (as liquidated damages and not as a penalty) the amounts set forth below:

1. **Collection Reliability**

- a) For each failure to commence service to a new Customer account within seven days after order, which exceed five such failures annually:
\$150.00
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five such failures annually: \$ 50.00
- c) For each failure to correct a missed pickup within the timing allotted for correction per Section 4.2.2, and for each additional Business Day in which the Collection is not made up, which exceeds ten such failures annually:
\$50.00/day
- d) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two consecutive scheduled pickup days: \$150.00

- e) For each failure to Collect Solid Waste, which has been properly set out for Collection, from an established Customer account on the scheduled Collection day which exceeds ten such failures annually: \$25.00/pickup

2. Collection Quality

- a) For each occurrence of damage to private property which exceeds five such occurrences annually: \$250.00
- b) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten such occurrences annually: \$150.00
- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds five such failures annually:
\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five such occurrences annually:
\$250.00
- e) For each failure to clean or replace Commercial and Industrial Containers in accordance with Section 3.7.5 of this Agreement which exceeds ten such failures annually: \$150.00
- f) For each failure to deliver a Roll-off Box or temporary Bin within 48 hours of a Customer's request: \$ 50.00

3. Customer Responsiveness

- a) For each failure to initially respond to a Customer complaint within one Business Day and for each additional day in which the complaint is not addressed: \$250.00

- b) For each failure to process Customer complaints as required by Article 4 herein: \$250.00
- c) For each failure to notify City within one hour from the time Company has remedied a complaint forwarded by City: \$ 10.00
- d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within one Business Day of request from City or Customers: \$150.00
- e) For each failure to process a claim for damages within 30 days from the date submitted to Company: \$100.00
- f) For each additional 30-day increment of time in which Company has failed to take good faith actions (in the sole judgment of City) to resolve a claim for damages within 30 days from the claim date:

\$100.00

4. **Timeliness of Submissions to City**

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

- a) Monthly or Quarterly Reports: \$100.00 per day
- b) Annual Reports: \$350.00 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100.00/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that Company fails to perform a task set forth in its public education plan: \$100.00 per day

7. **Diversion Efforts**

- a) For every Green Waste or Recycling Cart Collected as Trash without issuing a red tag per Section 3.4: \$25.00 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the diversion requirement each year per Section 3.8.1, beginning with the first full calendar year 2021, and including any partial calendar year at the end of the term: \$25.00 per ton

8. **Cooperation with Service Provider Transition**

- a) For each day routing information requested by City in accordance with Section 11.8 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service : \$1,000.00/day
- b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one day prior to new service provider servicing Customers with access issues, as described in Section 11.8: \$1,000.00/day
- c) For delay in not meeting the requirements contained in Sections 3.13 (route audit) and 11.8 (transition requirements) in a timely manner, in addition to the daily liquidated damages for breach under 8a) and 8b) above: \$10,000.00 per occurrence

9. Collection Vehicles

- a) For each day vehicle on each day Company does not comply with requirements to exclusively use Collection vehicles powered by natural gas as described in Section 3.9.2.B: \$100.00 per vehicle per day

10. General Contract Adherence

- a) For each day that Company fails to provide services required under this Agreement, or comply with terms of this Agreement, five Business Days after receipt of written notification from City that such services are not being provided or terms are not being met: \$100.00 per day

City may determine the occurrence of events giving rise to liquidated damages through the observation of its own employees or representative or investigation of Customer complaints.

Prior to assessing liquidated damages, City shall give Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. Company may review (and make copies at its own expense) all non-confidential information in the possession of City relating to incident(s)/non-performance. Company may, within ten days after receiving the notice, request a meeting with the City Manager or his or her designee. Company may present evidence in writing and through testimony of its employees and others relevant to the incident(s)/non-performance. The City Manager or his or her designee will provide Company with a written explanation of his or her determination on each incident(s)/non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager or his designee shall be final.

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

D. Timing of Payment. Company shall pay any liquidated damages assessed by City within ten days after they are assessed. If they are not paid within the ten-day period, City may withhold amount due from the next monthly payment to Company, may proceed against the bond required by this Agreement or order the termination of the Franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

[TO BE UPDATED BASED DEPENDING ON WHETHER COMPANY TAKES OVER RESIDENTIAL AND/OR COMMERCIAL BILLING RESPONSIBILITY.]

10.5 Excuse from Performance

10.5.1 Force Majeure

The parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events which are beyond the control of and not the fault of the party claiming excuse from performance hereunder.

10.5.2 Labor Unrest

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Company's employees or directed at Company will be considered an excuse from performance to the extent that Company meets the terms of this Section 10.5. Notwithstanding other remedies to which City shall be entitled under this Agreement in event of failure to perform, in the event of Company's failure to perform, or anticipated failure to perform, due to labor unrest, Company shall:

- 1) Provide a contingency plan to City within 90 days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval; and Company

shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to City's satisfaction. The plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized and detailed communications procedures to be used.

- 2) Notify the Public Works Director 60 days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 10.5.3 below.

Company shall meet all requirements under this section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 10.1, 10.3 and 10.4, in which case Company is not excused from performance; and Company shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

10.5.3 Procedures in Event of Excused Performance

The party claiming excuse from performance under Section 10.5.1 or 10.5.2 shall, within two days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this section. Throughout service disruption, Company shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Shall notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Company shall update its website and shall provide ongoing updates to City for use on its website, and a "reverse 911" contact method to

reach all possible Customers. Should enhanced contact technologies become available, Company shall use such methods upon approval from City.

The interruption or discontinuance of Company's services caused by one or more of the events excused shall not constitute a default by Company under this Agreement.

Notwithstanding the foregoing, however, if Company is excused from performing its obligations hereunder for any of the causes listed in this section for a period of 30 days or more, City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten days' notice, in which case the provisions relative to taking possession of Company's land, equipment and other property and engaging Company's Personnel in Article 9 and this Article 10 will apply.

10.6 Assurance of Performance

City may, at its option and in addition to all other remedies it may have, demand from Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as City may require. If Company fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by City, such failure or refusal shall be an event of default.

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

The parties intend that Company shall perform the services required by this Agreement as an independent contractor engaged by City and not as an officer or employee of City nor as a partner of or joint venture with City. No employee or agent of Company shall be or shall be deemed to be an employee or agent of City. Except as expressly provided herein, Company shall have the exclusive control over the manner and means of conducting the Solid Waste Collection services performed under this Agreement and all Persons performing such services. Company shall be solely responsible for the acts and omissions of its officers, employees, subcontractors, affiliates and agents. Neither Company nor its officers, employees, subcontractors, affiliates and agents shall obtain any rights to retirement benefits, Workers' Compensation benefits, or any other benefits which accrue to City employees by virtue of their employment with City.

11.2 Compliance with Law

In providing the services required under this Agreement, Company shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. City shall comply with all applicable regulations promulgated by federal, State, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended during the term.

11.3 Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

11.4 Jurisdiction

Any lawsuits between the parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

11.5 Assignment

Except as may be provided for in Article 9 (City's Right to Perform Service), neither party shall assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement to any other Person without the prior written consent of the other party. Any such assignment made without the consent of the other party shall be void, and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section when used in reference to Company, "assignment" shall include, but not be limited to (a) a sale, exchange or other transfer of substantially all of Company's assets dedicated to service under this Agreement to a third party; (b) a sale, exchange or other transfer of outstanding common stock of Company to a third party that may result in a change of control of Company; (c) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction to which results in a change of ownership or control of Company; (d) any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Company's property, or transfer occurring in the event of a probate proceeding; and (e) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Company.

Company acknowledges that this Agreement involved rendering a vital service to City's residents and businesses, and that City has selected Company to perform the services specified herein based on (a) Company's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (b) Company's financial resources to maintain the required equipment and to support its indemnity obligations to City under this Agreement. City has relied on each of these factors, among others, in choosing Company to perform the services to be rendered by Company under this Agreement.

If Company requests City's consideration of and consent to an assignment, City may deny or approve such request in its complete discretion, except for an assignment to an Affiliate, which City shall deny or approve in its reasonable discretion. No request by Company for consent to an assignment need be considered by City unless and until Company has met the following requirements:

- a) Company shall pay City its reasonable expenses for attorney's and consultant's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request. Company shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the advance payment, regardless of whether City consents to the assignment.
- b) Company shall pay a transfer fee to City equal to one percent of the annual revenue for the most recent 12 months prior to the effective date of the change of ownership multiplied by the number of remaining years, or fraction thereof, under this Agreement. Payment of a transfer fee will not be required in the event of an assignment to an Affiliate of Company.
- c) The proposed assignee must furnish City with audited financial statements of the proposed assignee's operations for the immediately preceding three operating

- years. If assignment is to an Affiliate and Affiliate provides a performance guarantee from the parent company, the parent company's audited financial statements may be provided.
- d) A pro-forma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such pro-forma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Company's operations. A pro-forma financial statement is not required for an assignment to an Affiliate where the parent guaranty is unchanged.
 - e) Except for an assignment to an Affiliate of Company, the proposed assignee must furnish City with satisfactory proof: (i) that the proposed assignee has at least ten years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by Company under this Agreement; (ii) that in the last five years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal or local Environmental Laws and that the assignee has provided City with a complete list of such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, State and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Company is in default at any time during the period of consideration.

11.6 Contracting or Subcontracting

Company shall not engage any affiliates or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of City. Transport from the transfer station to processing or disposal facilities is excluded from this paragraph.

11.7 Binding on Assigns

The provisions of this Agreement shall inure to the benefit of and be binding on the permitted assigns of the parties.

11.8 Transition to the Next Company

If the transition of services to another company occurs through expiration of term, default and termination, or otherwise, Company will cooperate with City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, Company providing detailed route lists, billing and service-level information and other operating records needed to service all properties covered by this Agreement. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this Agreement and/or other equitable relief necessary to enforce this Agreement.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Company shall obtain any Customer approvals, if required, to transfer such means of access to the new service provider in a timely manner, and shall provide to City and new service provider the names, service address, service level details, and contact information for any Customers who refuse to provide such authorization. Company shall be responsible for coordinating transfer immediately after Company's final pickups, so as not to disrupt service. Company shall provide City with detailed route sheets containing service names and addresses, billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least 90 days prior to the transition date, and provide an updated list two weeks before the transition and a final list of

changes the day before the transition. Company shall provide means of access to the new service provider at least one full Working Day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

Company shall cooperate in good faith with City and new service provider in scheduling exchanges of Company containers with containers provided by the new service provider so as to assure that Customers neither need to find storage for two sets of Containers nor go without a Container for an inconvenient length of time.

11.9 Parties in Interest

Nothing in this Agreement, whether express or implied, is intended to confer any rights on any Persons other than the parties to it and their representatives, successors and permitted assigns.

11.10 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement.

11.11 Condemnation

City fully reserves the rights to acquire Company's property utilized in the performance of this Agreement, by purchase or through the exercise of the right of eminent domain. This provision is additive and not intended to alter the rights of the parties set forth in Article 10.

11.12 Notice

All notices, demands, requests, proposals, proposals, approvals, consents and other communications which this Agreement requires, authorizes or contemplates shall be in writing and shall either be personally delivered to a representative of the parties at the address below or be deposited in the United States mail, first class postage prepaid, addressed as follows:

If to City: City Manager
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

Copy to: Public Works Director
Department of Public Works
City of Manhattan Beach
3621 Bell Avenue
Manhattan Beach, CA 90266

and to: City Attorney
City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266

If to Company: Cesar Torres
Executive Vice President
12303 Montague St.
Pacoima, CA 91331

Copy to: Gary Clifford
Executive Vice President
15045 Salt Lake Ave.
City of Industry, CA 91746

And to: Michael Pompay
Company Attorney
14048 Valley Blvd.
City of Industry, CA 91746

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

Notice shall be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

11.13 Representatives of the Parties

References in this Agreement to “City” shall mean the City Council and all actions to be taken by City shall be taken by the City Council except as provided below. The City Council may delegate, in writing, authority to the City Manager, and/or to other City employees and may permit such employees, in turn, to delegate in writing some or all of such authority to subordinate employees. Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

Company shall, by the Effective Date, designate in writing a responsible officer who shall serve as the representative of Company in all matters related to the Agreement and shall inform City in writing of such designation and of any limitations upon his or her authority to bind Company. City may rely upon action taken by such designated representative as actions of Company unless they are outside the scope of the authority delegated to him/her by Company as communicated to City.

11.14 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of the Franchise, City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste at any time prior to the expiration of the term. Without limiting the generality of the foregoing, City may solicit proposals from Company and from third parties for the provision of Collection services, Disposal services, Recycling services, Green Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination of this Agreement.

11.15 Compliance with Municipal Code

Company shall comply with those provisions of the Municipal Code that are applicable, and with any and all amendments to such applicable provisions during the term of this Agreement. If changes to the Municipal Code made after the execution of this Agreement are in conflict with this Agreement, the terms and conditions set forth in this Agreement shall prevail.

11.16 Privacy

Company shall strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers or the composition or contents of a Customer's waste stream shall not be revealed to any Person, governmental unit, private agency, or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Company from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939. This provision shall not apply to reports or records provided to City pursuant to this Agreement so long as City maintains reports or records with Customer identification or confidential information in accordance with this section, in which case this section shall apply to City in the same manner to which it applies to Company.

11.17 Proprietary Information, Public Records

City acknowledges that a number of the records and reports of Company are proprietary and confidential. Company is obligated to permit City inspection of its records on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Company. Notwithstanding the foregoing, and notwithstanding Section 11.17 (as it applies to City), any documents provided by Company to City that are public records may be disclosed pursuant to the California Public Records Act or other applicable law.

11.18 Section Deleted

11.19 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms or conditions of this Agreement the prevailing party shall be entitled to an award of attorney's fees, experts' fees, and other costs reasonably incurred in the prosecution or defense of such action, in addition to any other relief to which the party may be entitled.

ARTICLE 12

MISCELLANEOUS AGREEMENTS

12.1 Entire Agreement

This Agreement, including the exhibits, contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals, and agreements between the parties, whether written or oral. The Parties acknowledge this document has been executed with the consent and upon the advice of counsel. No verbal agreement or conversation with any office, agent, or employee of City, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained.

12.2 Section Headings

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

12.3 References to Laws

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended , unless otherwise specifically provided.

12.4 Interpretation

This Agreement, including the exhibits attached hereto, shall be interpreted and construed reasonably and neither for nor against either party, regardless of the degree to which either party participated in its drafting.

12.5 Amendment

This Agreement may not be modified or amended in any respect except by a writing signed by the parties and duly authorized.

12.6 Severability

If any non-material provision of this Agreement is for any reason deemed to be invalid and unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement which shall be enforced as if such invalid or unenforceable provision had not been contained herein.

12.7 Exhibits

Each of the exhibits identified in this Agreement is attached hereto and incorporated herein and made a part hereof by this reference.

12.8 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth herein within the time periods provided for shall not constitute a waiver of any rights of that party with regard to that failure to perform or subsequent failures to performing whether determined to be a breach, excused performance or unexcused defaults by the other party.

IN WITNESS WHEREOF, City and Company have executed this Agreement as of the day and year first above written.

CITY OF MANHATTAN BEACH

("City")

ATTEST: _____

CITY CLERK

By: _____

CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

COMPANY NAME

By: _____

City Attorney

Name:

Title:

EXHIBIT 1
COMPANY PROPOSAL

EXHIBIT 2
PUBLIC EDUCATION PLAN
(to be prepared by Company)

EXHIBIT 3

MAXIMUM INITIAL COMPANY COMPENSATION

[PROPOSED RATES FROM ATHENS PROPOSAL AS OF 7/1/2019 – 6/30/2020. RATES TO BE UPDATED, EFFECTIVE JULY 1, 2020, USING RATE ADJUSTMENT METHODOLOGY PER SECTION 5.4.]

Residential Monthly Solid Waste Rates (through June 30, 2020)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate		
	Standard Service - Used Carts	Extra Refuse Cart	Backyard Service Surcharge (2)
95-gallon trash ⁽¹⁾	\$ 30.00	\$ 8.00	\$ 15.00
65-gallon trash ⁽¹⁾	\$ 26.00	\$ 6.00	\$ 15.00
35-gallon trash ⁽¹⁾	\$ 22.00	\$ 4.00	\$ 15.00
20-gallon trash ⁽¹⁾	\$ 22.00	\$ 4.00	\$ 15.00

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building	
	Standard Service - Used Carts	Backyard Service Surcharge (2)
2 Dwelling Units ⁽³⁾	\$ 48.00	\$ 30.00
3 Dwelling Units ⁽³⁾	\$ 72.00	\$ 45.00
4 Dwelling Units ⁽³⁾	\$ 96.00	\$ 60.00
5 Dwelling Units ⁽³⁾	\$ 120.00	\$ 75.00
6 Dwelling Units ⁽³⁾	\$ 144.00	\$ 90.00
7 Dwelling Units ⁽³⁾	\$ 168.00	\$ 105.00
8 Dwelling Units ⁽³⁾	\$ 192.00	\$ 120.00
9 Dwelling Units ⁽³⁾	\$ 216.00	\$ 135.00

- (1) Rate for first trash container at each dwelling unit which *includes* the cost for the Door to Door HHW program.
- (2) The Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.
- (3) Flat Rate for trash cart service at each dwelling unit which *includes* the cost for the Door to Door HHW Program.

Note: Additional trash carts for customers with 2 to 9 units, and additional recycling and organics waste carts for all residential cart customers shall be provided at no additional charge.

EXHIBIT 3 (continued)

MAXIMUM INITIAL COMPANY COMPENSATION

(through June 30, 2020)

Commercial Cart & Bin Rates

[PROPOSED RATES FROM ATHENS PROPOSAL AS OF 7/1/2019 - 6/30/2020. RATES TO BE UPDATED, EFFECTIVE JULY 1, 2020, USING RATE ADJUSTMENT METHODOLOGY PER SECTION 5.4.]

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
35-Gallon Trash Cart	\$ 34.73	\$ 69.47	\$ 104.20	\$ 138.93	\$ 173.62	\$ 208.35	\$ 243.11	\$ 3.90
65-Gallon Trash Cart	\$ 68.06	\$ 136.05	\$ 204.08	\$ 272.14	\$ 340.13	\$ 408.18	\$ 476.22	\$ 7.66
95-Gallon Trash Cart	\$ 102.05	\$ 204.08	\$ 306.15	\$ 408.18	\$ 510.19	\$ 612.26	\$ 714.29	\$ 10.92
2 Cubic Yard - Trash	\$ 192.69	\$ 301.10	\$ 401.39	\$ 501.80	\$ 602.15	\$ 802.87	\$ 1,003.55	\$ 24.53
3 Cubic Yard -Trash	\$ 247.47	\$ 381.98	\$ 509.28	\$ 636.58	\$ 763.89	\$ 1,018.52	\$ 1,273.19	\$ 36.77
4 Cubic Yard - Trash	\$ 296.48	\$ 463.42	\$ 617.84	\$ 772.33	\$ 926.79	\$ 1,235.72	\$ 1,544.65	\$ 49.04
6 Cubic Yard - Trash	\$ 381.17	\$ 595.73	\$ 794.35	\$ 992.90	\$ 1,191.49	\$ 1,588.67	\$ 1,985.86	\$ 73.54
2 Cubic Yard Compactor - Trash	\$ 322.08	\$ 503.18	\$ 670.86	\$ 847.52	\$ 1,006.39	\$ 1,342.00	\$ 1,677.77	\$ 41.02
3 Cubic Yard Compactor - Trash	\$ 410.70	\$ 641.90	\$ 861.88	\$ 1,069.59	\$ 1,283.41	\$ 1,711.31	\$ 2,139.19	\$ 61.02
4 Cubic Yard Compactor - Trash	\$ 499.99	\$ 781.24	\$ 1,041.71	\$ 1,301.98	\$ 1,562.51	\$ 2,083.26	\$ 2,604.39	\$ 82.71
6 Cubic Yard Compactor - Trash	\$ 645.04	\$ 1,008.10	\$ 1,344.17	\$ 1,680.16	\$ 2,016.16	\$ 2,688.28	\$ 3,360.34	\$ 124.47
2 Cubic Yard Split Bin ⁽¹⁾	\$ 182.73	\$ 292.33	\$ 389.70	\$ 487.11	\$ 584.56	\$ 777.49	\$ 971.83	\$ 24.53
3 Cubic Yard Split Bin ⁽¹⁾	\$ 187.70	\$ 296.54	\$ 395.32	\$ 494.16	\$ 587.81	\$ 788.66	\$ 985.87	\$ 36.77
4 Cubic Yard Split Bin ⁽¹⁾	\$ 192.69	\$ 301.10	\$ 401.39	\$ 501.80	\$ 602.15	\$ 802.87	\$ 1,003.55	\$ 49.04
35-Gallon Commercial Cart - Recycling	\$ 17.37	\$ 34.74	\$ 52.10	\$ 69.47	\$ 86.81	\$ 104.18	\$ 121.56	\$ 1.95
65-Gallon Commercial Cart - Recycling	\$ 34.03	\$ 68.03	\$ 102.04	\$ 136.07	\$ 170.07	\$ 204.09	\$ 238.11	\$ 3.83
95-Gallon Commercial Cart - Recycling	\$ 51.03	\$ 102.04	\$ 153.08	\$ 204.09	\$ 255.10	\$ 306.13	\$ 357.15	\$ 5.46
2 Cubic Yard - Recycling	\$ 96.35	\$ 150.55	\$ 200.70	\$ 250.90	\$ 301.08	\$ 401.44	\$ 501.78	\$ 12.27
3 Cubic Yard - Recycling	\$ 123.74	\$ 190.99	\$ 254.64	\$ 318.29	\$ 381.95	\$ 509.26	\$ 636.60	\$ 18.39
4 Cubic Yard - Recycling	\$ 148.24	\$ 231.71	\$ 308.92	\$ 386.17	\$ 463.40	\$ 617.86	\$ 772.33	\$ 24.52
6 Cubic Yard - Recycling	\$ 190.59	\$ 297.87	\$ 397.18	\$ 496.45	\$ 595.75	\$ 794.34	\$ 992.93	\$ 36.77
Food Waste - All Container Sizes	No charge							
Locking Bin	\$8.47 per pickup per week							

(1) Assumes split bin consists of half refuse, half trash. Per Athens' proposal, Athens requests to not provide split bins, and instead provide source-separated recycling containers. For customers that do not have space for a recycling container, Athens will process the customer's trash at their City of Industry MRF.

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2020)

[PROPOSED RATES FROM ATHENS PROPOSAL AS OF 7/1/2019 – 6/30/2020. RATES TO BE UPDATED, EFFECTIVE JULY 1, 2020, USING RATE ADJUSTMENT METHODOLOGY PER SECTION 5.4.]

Roll off Box Rates ⁽¹⁾

Rate Per Pull, Excluding Disposal	
Standard Box, Any Size	\$ 290.00 per pull
Compactor Box, Any Size	\$ 335.00 per pull
Rolloff Per Ton Charges	
Trash Disposal	\$ 90.00 per ton
Mixed Recyclables	\$ 20.00 per ton
Organics Waste	\$ 100.00 per ton
Additional Container Rental - (for boxes emptied less than 3x/month)	
Standard Box, Any Size	\$ 30.00 per week
Compactor Box, Any Size	\$ 150.00 per week

Optional COD Rates

Rate Per Pull, Excluding Disposal	
25-40 cubic yard roll-off box	\$ 290.00 per pull
Low Boy (10 cubic yard) roll-off box	\$ 290.00 per pull
Rolloff Per Ton Charges	
Mixed Loads of C&D Debris	\$ 78.00 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
Temporary Bin Service	
First Dump, including delivery and disposal	\$ 239.47 per dump
Additional dumps, including disposal	\$ 79.82 per dump

EXHIBIT 3 (continued)
MAXIMUM INITIAL COMPANY COMPENSATION
(through June 30, 2020)

[PROPOSED RATES FROM ATHENS PROPOSAL AS OF 7/1/2019 – 6/30/2020. RATES TO BE UPDATED, EFFECTIVE JULY 1, 2020, USING RATE ADJUSTMENT METHODOLOGY PER SECTION 5.4.]

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 213.13	\$ 239.47	\$ 265.81	\$ 318.50
Each Additional Dump	\$ 53.48	\$ 79.82	\$ 106.17	\$ 159.65
Rent Per Day Beyond 10 Days	\$ 2.01	\$ 3.00	\$ 3.99	\$ 6.00

Extra Services

Hasp and Lock Services	\$ 8.47 per bin per month (any frequency)
Cart Exchange	\$ 16.40 per applicable overage (see Section 3.7.1.1)
Trash Cart Overage	\$ 5.48 per applicable overage (see Section 3.1.3.3)
Additional Residential Bulky Item Pickup	\$ 23.61 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 17.71 per item
• All Other Items	\$ 11.80 per item
Contamination Fee (Section 3.4)	
• Residential Account	\$ 20.00 per occurrence
• Commercial Account	\$ 50.00 per occurrence
Emergency Collection and Disposal	\$ 82.63 per hour
Bin Cleaning or Exchange	\$ 35.00 per cleaning or exchange (above one free per year)
Bin Overage Charge	\$ 38.26 per applicable overage (see Section 3.1.6)
23-gal Organics Slim-Jim Containers	\$ 23.00 per unit
Downtown Maintenance Enhancements (See Section 3.6.9)	
• Collection (2-person crew and truck)	\$ 150.00 per hour
• Disposal	\$ 98.00 per ton

EXHIBIT 4A

EXAMPLE RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices						
			A	B	C	
Row	Adjustment Factor	Index	Old Index Value	New Index Value	Percent Change In Index ((Column B/ Column A) -1)	
1	CPI, Garbage & Trash Collection (1)	(1)	439.43	449.09	2.2%	
Step Two: Apply percentage change to rates						
			D	E	F	G
Row	Rate Category		Current Net Contractor Rate (2)	Percentage Change (from Column C)	Rate Increase or Decrease (Column D x Column E)	Adjusted Net Contractor Rate (Column D + Column F)
2	64-gallon Trash Cart - Single Family Residential		\$ 26.00	2.2%	\$ 0.57	\$ 26.57
3	2 unit Service		\$ 48.00	2.2%	\$ 1.06	\$ 49.06
4	1-unit Backyard Surcharge		\$ 15.00	2.2%	\$ 0.33	\$ 15.33
5	2-unit Backyard Surcharge		\$ 30.00	2.2%	\$ 0.66	\$ 30.66
6	Extra bulky item		\$ 23.61	2.2%	\$ 0.52	\$ 24.13
7	Special Pickup/Cart Ov.		\$ 5.48	2.2%	\$ 0.12	\$ 5.60
8	35-gallon Trash Cart - Commercial		\$ 34.73	2.2%	\$ 0.76	\$ 35.49
9	3 yd trash bin, 1x week		\$ 247.47	2.2%	\$ 5.44	\$ 252.91
10	3 yd trash comp., 1x week		\$ 410.70	2.2%	\$ 9.04	\$ 419.74
11	3 yd bin, trash extra pickup		\$ 36.77	2.2%	\$ 0.81	\$ 37.58
(1) Consumer Price Index Consumer Price Index (CUUR0000SEHG02) for All Urban Consumers, garbage and trash collection – U.S. city average, not seasonally adjusted, as published by the United States Department of Labor, Bureau of Labor Statistics. Average annual change per Section 5.4 of agreement.						
(2) Example rates listed. Adjustment applies to all rates.						

EXHIBIT 4B

EXAMPLE CALCULATION FOR AVERAGE ANNUAL CHANGE IN PUBLISHED CONSUMER PRICE INDEX

The rate adjustment index is calculated using the “average annual change” as demonstrated in the example below, measured for the calendar year ended in the December before each rate adjustment, as compared to the calendar year ended the prior December. The Bureau of Labor Statistics publishes the Consumer Price Index for All Urban Consumers for Garbage and Trash Collection (CUUR0000SEHG02) - U.S. City average.

If a rate adjustment based on this CPI index were to be implemented as of July 1, 2018, the calendar year 2017 average annual index of 449.089 would have been the “New Index Value” to be used in Column B of the example rate adjustment formula in Exhibit 4A, and the calendar year 2016 average annual index of 439.427 would have been the “Old Index Value” in Column A. This would have resulted in a 2.2% increase to the rates as calculated in Column C of Exhibit 4A.

Consumer Price Index – All Urban Consumers, U.S. City Average

Garbage and Trash Collection, CUUR0000SEHG02

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2016	437.205	438.296	437.699	437.676	438.317	437.858	438.607	439.358	439.707	440.311	443.343	444.745	439.427
2017	446.266	447.699	446.987	447.129	447.272	448.046	448.328	448.717	449.008	452.196	453.820	453.596	449.089
Average Annual Change:													2.2%

EXHIBIT 4C

EXAMPLE CALCULATION FOR REVENUE SHARING FROM SALE OF RECYCLABLE MATERIALS

Customers will share in the revenues received from source-separated recycling programs generated from Manhattan Beach through a 50% credit that will be determined during the rate adjustment period for each service type, as described in Section 3.2.7.

Commodity Value Per Ton: (Commercial Example)

Commodity	Tons Processed	Percentage	Rate	Value
Commodity #1	25	13.89%	\$200.00	\$27.78
Commodity #2	15	8.33%	\$100.00	\$8.33
Commodity #3	40	22.22%	\$50.00	\$11.11
Commodity #4	<u>20</u>	<u>11.11%</u>	\$1,500.00	<u>\$166.65</u>
Commodity Total	100	55.55%		\$213.87
Residual	<u>80</u>	<u>44.45%</u>		
Total	180	100.00%		

Net Recycling Revenue (Commercial Example):

Description	Calculation
Tons Processed	180 tons
Recovery Rate	55.55%
Tons Recovered	$200 \times 55.55\% = 100$
Commodity Value per Ton	\$213.87
Commodity Revenue, Gross	$100 \times \$213.87 = \$21,387.00$

Tons Processed	180 tons
Processing Cost per Ton	\$75.00
Processing Cost - Total	$180 \times \$75.00 = \$13,500.00$

Tons Processed	180 tons
Residual	44.45%
Tons Disposed	$180 \times 44.45\% = 80.00$
Disposal Cost per Ton	\$30.00
Disposal Cost - Total	$80.01 \times \$30.00 = \$2,400.00$

Description	Calculation	Per Processed Ton
Commodity Revenue - Gross	\$21,387.00	\$118.82
Processing Cost - Total	(\$13,500.00)	(\$75.00)
Disposal Cost - Total	(\$2,400.00)	(\$13.33)
Commodity Revenue - Net	\$5,487.00	\$30.49

Residential:

Recycling Revenue for 12 months, residential blue cart service	\$43,500.00
50% split	\$21,750.00
Number of residential recycling carts in service	3,700
Annual revenue per cart	\$5.88
Monthly credit per cart	\$0.49

Current Rate, Residential	Rate Adjustment	New Rate, Residential (Gross)	City-Approved Credit	Modified Rate Adjustment (Net)
\$22.00	3.8%	\$22.84	(\$0.49)	\$22.35

Commercial:

Recycling Revenue for 12 months, commercial blue bin service	\$5,487.00
50% split	\$2,743.50
Number of commercial blue bin weekly cubic yards	1,229
Annual revenue per cubic yard	\$2.23
Monthly credit per cubic yard	\$0.19
Credit for 1 3-cubic yard bin, 1x week	\$0.57

Current Rate, Commercial (3 CY bin, 1x week)	Rate Adjustment	New Rate, Commercial (Gross)	City-Approved Credit	Modified Rate Adjustment (Net)
\$148.29	5.4%	\$156.30	(\$0.57)	\$155.73

EXHIBIT 5

EXHIBIT DELETED

EXHIBIT 6

COMPANY'S FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That, _____, a _____ corporation, as PRINCIPAL, and _____, a corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of Five Hundred Thousand (\$500,000.00) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the above bounden PRINCIPAL has entered into a contract, entitled "INTEGRATED SOLID WASTE MANAGEMENT SERVICES" with City, to do and perform the following work, to wit: Collect, Process and Dispose of Solid Waste generated within City, in accordance with the Agreement.

NOW, THEREFORE, if the above bounden PRINCIPAL shall well and truly perform, or cause to be performed each and all of the requirements and obligations of the Agreement to be performed by the PRINCIPAL, as in the Agreement set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligations on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

IN WITNESS WHEREOF, the PRINCIPAL and SURETY have caused these presents to be duly signed and sealed this _____ day of _____, 2018.

a _____ corporation

SURETY

By: _____
(PRINCIPAL)

(SEAL)

By: _____
(ATTORNEY IN FACT)

(SEAL)

EXHIBIT 7

NOTARY CERTIFICATION

STATE OF CALIFORNIA)

COUNTY OF _____) ss:

On _____, _____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____, known to me to be the _____ of the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that such the Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of _____ this _____ day of _____, _____.

Notary Public

My Commission Expires:

EXHIBIT 8

CITY OWNED/MANAGED EVENTS

Row	Event
1	Family Campout
2	Fishing Derby
3	Concerts in the Park (11 weeks)
4	Tennis Tournament
5	Sand Castle Design Contest
6	Employee Luncheon
7	Polliwog Movie in the Park
8	6-Man Volleyball Tournament & Surf Festival
9	Halloween Carnival
10	Pier Lighting Ceremony
11	Pier Fireworks Show
12	Family Crafts Night
13	Cultural Arts Fair
14	Senior Health Fair
15	Pumpkin Race
16	Manhattan Open Volleyball Tournament

EXHIBIT 9

CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by City in need of Collection and proper processing or disposal by Company on an annual basis as of the start of this Agreement. See Section 3.6.2.

Item	Annual Quantity Disposed
Acids	41 lbs.
Aerosols (Flammable)	185 lbs.
Aerosols (Toxics/Corrosives)	5 lbs.
Non-PCB Ballast	411 lbs.
Electronic Wastes	234 lbs.
Flammable Liquids	156 lbs.
Flammable Solids	15 lbs.
Lamps - CFLs	133 lbs.
Lamps - Fluorescent	526 lbs.
Latex Paints	300 lbs.
Lead Acid Batteries	182 lbs.
Mercury Devices	28 lbs.
Non-RCRA	700 lbs.
Oil Filters	1,000 lbs.
Oil-Based Paints	65 lbs.
Propane Cylinders	20 lbs.
Batteries	5,135 lbs.
Used Oil	445 gallons
Tires	Approx. 125 tires per year

EXHIBIT 10

MCR (AB 341) & MORE (AB 1826) Activities Worksheet & Future SB 1383 Worksheet (to be completed by Company monthly)

[Note: Future SB 1383 worksheets provided by CalRecycle will be included in this Exhibit.]




EXHIBIT 11

LIST OF ACCEPTABLE AND NON-ACCEPTABLE RECYCLABLE MATERIALS





RECYCLABLES must be dry, loose (not bagged) and include **ONLY** the following:

Aluminum cans	Mixed paper (ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags, and non-metallic wrapping paper)
Glass jars and bottles	Corrugated cardboard
Steel, bi-metal, and tin cans	Telephone books
Empty aerosol containers	PET bottles with the symbol #1
Juice boxes and milk cartons (aseptic packaging, Tetra Pak© and waxed cardboard)	HDPE plastic bottles with the symbol #2
Newspaper	PP plastic bottles and tubs with symbol # 5

COMMON EXAMPLES OF RECYCLABLE MATERIALS FOR PLASTICS 1, 2, AND 5

Symbol	Common Examples of Acceptable Items
	Water bottles, soda bottles, peanut butter jars, salad dressing bottles, etc.
	Clear milk jugs, detergent bottles, bleach bottles, shampoo and conditioner bottles, plastic crates, plastic carts, lawn chairs, laundry baskets, etc.
	Tupper ware, yogurt containers, margarine tubs and other refrigerated containers, bottle tops, etc.

COMMON EXAMPLES OF NON-RECYCLABLE MATERIALS FOR PLASTICS 3, 4, 6 AND 7

Symbol	Common Examples of Non-Acceptable Items
	Food wrap, tile, PVC plumbing pipes, window frames, etc.
	Grocery bags, shrink/cling wrap, garment bags, frozen food bags, sandwich bags, etc.
	Throwaway utensils, meat packing, protective packing, Styrofoam insulation, packing peanuts, etc.
	Other plastics include polylactic (PLA) plastic (commonly used for 3-D printers), Plastic CDs/DVDs, baby bottles, eye glasses, exterior lighting fixtures, etc.



December 5, 2018

14048 Valley Blvd.
P.O. Box 60009
City of Industry, CA 91716-0009
Fax (626) 330-4686
(626) 336-3636

April Hilario Hamud
Project Manager
HF&H Consultants
19200 Von Karman Avenue, Suite 360
Irvine, CA 92612

Re: Letter of Intent to Sign Contract

Dear April,

As you may know, Athens Services has been a valued partner with the City of Manhattan Beach for over seven years. Our current sweeping and porter service contract has recently been extended for another eight year term and additional services have been added. At Athens, we always do what we say and make every attempt to exceed our contractual and service expectations. We have proven this in the South Bay year after year. There has never been a time that our contractual compliance has been an issue, and we don't intend on having that happen now.

It is unusual to have us sign a draft contract that has the potential to change at some point; especially with the dynamics involved with City Council input. Athens always respects the input that the City leaders have; and we understand that there are many evolutions from a draft to final contract.

Let this letter serve as confirmation that Athens Services will sign the attached draft contract in its current form and with its current provisions if the same is approved by the City of Manhattan Beach without change; however, Athens feels the best way to consummate a long-term contract between the City and Athens is by allowing Athens an opportunity to use its resources and expertise in the area to tailor the contract and services for Manhattan Beach and the City's residents. Without the opportunity for collaborative discussions focused on closely matching city needs with contracted services, we feel it is premature to sign a final contract binding the parties.

Athens is excited to expand its partnership with Manhattan Beach and looks forward to the next steps in this process.

Sincerely,

Gary M. Clifford
Executive Vice President
gclifford@athensservices.com