



## **CITY OF MANHATTAN BEACH**

**Meeting of the Finance Subcommittee  
January 24, 2011 – 3:00 PM  
City Council Chambers  
1400 Highland Avenue**

**1. Action Minutes from December 7, 2010 and December 13, 2010 Meetings**

*Recommended Action: Approve*

**2. Consideration of the 2011-2012 Business License Tax Adjustment**

*Recommended Action: Approve*

**3. Consideration of Financial Reports for December 2010**

*Recommended Action: Receive and File*

**4. Consideration of Investment Portfolio for December 2010**

*Recommended Action: Receive and File*

**5. Consideration of Accounts Receivable Report for December 2010**

*Recommended Action: Receive and File*

**6. Consideration of Best and Final Offers/Proposals for the City's Waste Hauling Requirements and Recommendation to the Full City Council for Award of Contract**

*Recommended Action: Discuss and Provide Direction*

**7. Public Comments**

**8. Adjourn**

Copies of Staff Reports or Other Written Documentation relating to agenda items are on file in the office of the Finance Director.

## Finance Subcommittee Meeting Action Minutes

Meeting Date: December 7, 2010

Recording Secretary: Bruce Moe

In Attendance: Tim Lilligren, Treasurer  
Richard Montgomery, Mayor  
Nick Tell, Mayor Pro Tem  
Richard Thompson, Interim City Manager  
Bruce Moe, Finance Director  
Henry Mitzner, Controller  
Jim Arndt, Public Works Director  
Anna Luke, Management Analyst

Called to Order: 3:35 PM by Tim Lilligren, City Treasurer

### Agenda Item #1 – Action Minutes from October 19, 2010 Meeting

The Finance Subcommittee Approved minutes.

### Agenda Item #2 – Consideration of Proposals Received for the City's Waste Hauling Requirements

The Finance Subcommittee reviewed the proposals and directed staff to schedule meetings for December 13, 2010 with Athens, Waste Management and Crown.

### Agenda Item #3 - Consideration of Fiscal Year 2009-2010 Financial Audit Results

The Finance Subcommittee received a summary report from the Finance Director on the results from FY 2009-2010. The Subcommittee then excused City staff and discussed the audit results with the Auditor (Richard Kukuchi – Lance, Soll & Lunghard). No further action was taken. The report will be completed and submitted to the City Council on February 1, 2011.

### Agenda Item #4 – Public Comments

None.

### Adjournment

The meeting was adjourned at 5:05 PM.

Finance Subcommittee Meeting  
December 13, 2010  
10:45 a.m. – 4:30 p.m.  
Meeting Minutes

## **MEETING AGENDA**

**Content of interview:** Each hauler will be asked to provide a presentation no longer than 45 minutes; discussion to follow. This opportunity is for the City to familiarize itself with the proposer(s).

**The schedule for the day is as follows:**

10:45am: Arrival time

11:00am - 12:15pm: Interview #1: ATHENS SERVICES

12:15pm - 12:45pm: Lunch (will be provided)

12:45pm - 02:00pm: Interview #2: WASTE MANAGEMENT

02:00pm - 02:15pm: Break

02:15pm - 03:30pm: Interview #3: CROWN DISPOSAL

03:30pm - 04:30pm: Debriefing & Recommend Next Steps

**Debriefing & Recommending Next Steps:** The Finance Subcommittee also chose at its December 7th meeting to create a "Schedule C." Following the interviews, the Finance Subcommittee will need to provide Staff with direction as to the "next steps," including identifying any additional information/action needed to recommend/decide which hauler(s) will proceed to final contract development. According to HF&H Consultants, if the Finance Subcommittee prefers to retain the schedule of a February 1, 2011 award date, then the final contract hauler(s) must be chosen on December 13, 2010 to allow sufficient time to create the final contract(s) for review at the Finance Subcommittee's January 18, 2011 meeting.

## **ATTENDEES**

**City – ALL DAY**

- Mayor Richard Montgomery
- Mayor Pro Tem Nick Tell
- City Treasurer Tim Lilligren
- PW Director Jim Arndt
- PW Analyst Anna Luke

**Consultant – ALL DAY**

- Laith Ezzet

**Athens Services – 11:00 AM – 12:15 PM**

- Mary McKenrick
- Christian Warner
- William Wilson
- Evelyn Cornejo
- Gary Clifford

**Waste Management – 12:45 PM – 2:00 PM**

- Susan Moulton
- Darrell Kato
- Vickie Wippel
- Michael Grimm
- Dieter Eckels – from Cascadia Consulting (brought in by WM)

### **Crown Disposal 2:15 PM – 3:30 PM**

- Karen Sandvig
- Tim Fry
- Jason Hammer
- Jerry Prieto
- Carole Sarian

## **MEETING MINUTES**

10:45 a.m.: City attendees and Consultant arrived before first interview.

11:00 a.m. - 12:15 p.m.: Athens Services presented a power point about the company and its capabilities for Manhattan Beach. Gary Clifford presented most of the power point. Evelyn Cornejo provided a sample view of the companies' customer service software. Mary McKenrick discussed the public outreach efforts of Athens. Christian Warner discussed the financial stability of the company, and William Wilson provided information on the operations of the business. The Finance Subcommittee asked questions of Athens throughout the presentation. A hard copy of Athens presentation is available for review.

12:15 p.m. – 12:45 p.m.: Lunch for City attendees and the Consultant.

12:45 p.m. – 2:00 p.m.: Waste Management brought hard copies of their presentation and Susan Moulton and Vickie Wippel alternately led the presentation. At one point, Dieter Eckles from Cascadia Consulting was given the opportunity to take over the presentation. He reviewed his thoughts about Athens Services and Crown Disposals ability to perform at the levels which they bid. Mayor Pro Tem Nick Tell paused the presentation and asked that WM continue discussing what they can do, and to discontinue focusing on what they felt their opponents could not do. The Finance Subcommittee asked questions of Waste Management throughout the presentation. A hard copy of Waste Management's presentation is available for review.

2:00 p.m. – 2:30 p.m.: Break & Discussion with City attendees and Consultant.

2:30 p.m. – 3:45 p.m.: Crown Disposal presented a power point about the company and its capabilities for Manhattan Beach. Tim Fry led the presentation, and other Crown representatives provided information as the Finance Subcommittee asked questions throughout the presentation. Karen Sandvig is in charge of the customer service department, and Carole Sarian is in charge of community outreach. A hard copy of Crown Disposal's presentation is available for review.

3:45 p.m. – 4:30 p.m.: City attendees and the Consultant held a debriefing to discuss the "next steps" regarding all bidders. The Finance Subcommittee decided the following:

1. Mayor Montgomery and Mayor Pro Tem Tell will provide a brief verbal summary of the December 13<sup>th</sup> meeting to the rest of the City Council at its December 21, 2010 meeting.
2. The Finance Subcommittee directed Staff to ask all haulers for a "Best and Final" bid allowing any rate and/or program changes.
3. The Finance Subcommittee directed Staff to develop final contracts with all three haulers: Athens Services, Waste Management, and Crown Disposal.
4. The Finance Subcommittee agreed to review and discuss the final contracts at their next meeting, which will be held on January 24, 2011.


The City Council will award the refuse hauler contract at its February 15, 2011 meeting.




# Staff Report

## City of Manhattan Beach

**TO:** Finance Subcommittee

**THROUGH:** Bruce Moe, Finance Director 

**FROM:** Steve S. Charelian, Revenue Services Manager 

**DATE:** January 24, 2011

**SUBJECT:** Approval of 2011/2012 Business License Tax Adjustment

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### **RECOMMENDATION:**

Staff Recommends that the Finance Subcommittee Approve the FY 2011-2012 Proposed Business License Tax Adjustment.

### **BUDGET IMPLICATION:**

Assuming that gross receipts relatively stay the same, staff estimates that business tax revenue will increase by approximately \$11,000.

### **DISCUSSION:**

Section 6.01.320 of the Municipal Code provides for the annual increase or decrease adjustment of business license rates by the Consumer Price Index (CPI). The adjustment is based on the Bureau of Labor Statistics – Consumer Price Index for the preceding September. The September 2010 CPI reflected a 0.4% increase comparable to last year's CPI decrease of negative 1.0%. However, this does not translate into a 0.4% tax increase in all cases (please see the business license tax analysis – attachment 1). The business license tax year is from March to February.

We are requesting that the Finance Subcommittee approve the proposed 2011-2012 Business Tax Adjustment. The City Council will consider the adjustment at the February 1, 2011 meeting.

### **ATTACHMENTS:**

1. 2011-2012 Business License CPI Tax Analysis
  2. Proposed 2011-2012 Business License Tax Resolution
-

Current 2010-2011		Proposed 2011-2012		% Change	\$ Change
<b>Gross Receipts</b>		<b>\$100,000.00</b>		<b>\$100,000.00</b>	
Basis for Calculation	\$204.68 for the first \$59,800.00 + \$1.88 per \$1,000 in excess thereof (Not to exceed \$7,923.00)		\$205.48 for the first \$60,000.00 + \$1.89 per \$1,000 in excess thereof (Not to exceed \$7,954.00)		
1 Base Tax	\$ 204.68	Base Tax	\$ 205.48	0.4%	\$ 0.80
2 Gross Receipts	\$75.58	Gross Receipts	\$75.60		\$0.02
3 Total Tax	\$280.26	Total	\$281.08	0.3%	\$0.82

Current 2010-2011		Proposed 2011-2012		% Change	\$ Change
<b>Gross Receipts</b>		<b>\$350,000.00</b>		<b>\$350,000.00</b>	
Basis for Calculation	\$204.68 for the first \$59,800.00 + \$1.88 per \$1,000 in excess thereof (Not to exceed \$7,923.00)		\$205.48 for the first \$60,000.00 + \$1.89 per \$1,000 in excess thereof (Not to exceed \$7,954.00)		
1 Base Tax	\$ 204.68	Base Tax	\$ 205.48	0.4%	\$ 0.80
2 Gross Receipts	\$545.58	Gross Receipts	\$548.10		\$2.52
3 Total Tax	\$750.26	Total	\$753.58	0.4%	\$3.32

Current 2010-2011		Proposed 2011-2012		% Change	\$ Change
<b>Gross Receipts</b>		<b>\$4,200,000.00</b>		<b>\$4,200,000.00</b>	
Basis for Calculation	\$204.68 for the first \$59,800.00 + \$1.88 per \$1,000 in excess thereof (Not to exceed \$7,923.00)		\$205.48 for the first \$60,000.00 + \$1.89 per \$1,000 in excess thereof (Not to exceed \$7,954.00)		
1 Base Tax	\$ 204.68	Base Tax	\$ 205.48	0.4%	\$ 0.80
2 Gross Receipts	\$7,783.58	Gross Receipts	\$7,824.60		\$41.02
3 Total Tax	\$7,923.00	Total	\$7,954.00	0.4%	\$31.00



**2011-2012  
PROPOSED  
Business Tax Resolution**

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**City of Manhattan Beach**  
**Proposed – BUSINESS LICENSE TAX RESOLUTION 2011-2012**  
**(Provided for in MBMC Section 6.01.290)**

MAJOR BUSINESS CLASSIFICATION	CATEGORY	GENERAL INFORMATION	CURRENT TAX RATES	PROPOSED TAX RATES
<b>Administrative and Sales Office</b>	1) Administrative and Sales Office 2) Branch Establishments	1) For administrative and sales offices or similar businesses	\$204.68 per annum plus \$28.44 per employee in excess of 2 not to exceed \$7,923.00	\$205.48 per annum plus \$28.55 per employee in excess of 2 not to exceed \$7,954.00
<b>Commercial Property</b>	Commercial Property	Every person who owns commercial real property within the city and who rents or leases such property or any portion thereof shall pay a business license tax	Pay the greater of \$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00 or \$.309 per square foot for building area in excess of 5,000 square feet less 1/3 sales tax credited to the City of Manhattan Beach not to exceed \$163,592.00	Pay the greater of \$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00 or \$.310 per square foot for building area in excess of 5,000 square feet less 1/3 sales tax credited to the City of Manhattan Beach not to exceed \$164,246.00.
<b>Contractors</b>	1) Contractors 2) Owner Builders	General building trades (including general, electrical, plumbing, etc. A or B, C10, C36, C44, C45, C53 as licensed by the State). Every person engaged in the business or acting as a contractor shall pay the tax	\$331.68 per annum	\$333.00 per annum
<b>Home Occupation</b>	Home Occupation	No license shall be issued under this subsection until the applicant has applied for and received a home occupation permit as required by Section 10.42.070	\$102.24 per annum for the first \$36,400.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	\$102.64 per annum for the first \$36,500.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.

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MAJOR BUSINESS CLASSIFICATION	CATEGORY	GENERAL INFORMATION	CURRENT TAX RATES	PROPOSED TAX RATES
<b>Hotels/Motels</b>	Hotels/Motels	In addition to business license tax fees, a transient occupancy tax shall be paid	\$18.99 per annum per unit	\$19.07 per annum per unit
<b>Manufacturing</b>	Manufacturing	Every person engaged in the business of manufacturing or conducting any business considered to be of manufacturing in nature	\$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	\$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.
<b>Out-of-Town</b>	Out-of-Town	Any business in the city without a fixed location	\$102.24 per annum for the first \$36,400.00 of gross receipts (Manhattan Beach only) and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	\$102.64 per annum for the first \$36,500.00 of gross receipts (Manhattan Beach only) and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.
<b>Professionals</b>	Professional services	All persons engaged in any business, profession or occupation considered to be of a professional nature unless expressly provided for elsewhere in this section. Professional services shall include but are not limited to accountant, architect, attorney, chiropractor, consultant, dentist, doctor, engineer, escrow services, financial institutions (to determine parking fee), hospital, insurance agent (exempt-waiver needed), insurance broker, mortuary, psychologist, public relation, real estate, veterinarian.	\$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	\$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.

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MAJOR BUSINESS CLASSIFICATION	CATEGORY	GENERAL INFORMATION	CURRENT TAX RATES	PROPOSED TAX RATES
Public Utilities	1) Public Utilities	1) Not subject to franchise fee.  Subject to franchise fee.	1) Not subject to franchise fee shall pay \$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00  Subject to franchise fee – shall pay \$204.68 per annum.	1) Not subject to franchise fee shall pay \$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.  Subject to franchise fee – shall pay \$205.48 per annum.
	2) Refuse Collection	2) Purpose of refuse collection.	2) \$274.76 per annum per vehicle	2) \$275.84 per annum per vehicle
Recreation and Entertainment	1) Arcades	1,2) Arcades indoors where photographs, gramophones, talking machines, biographs, projectoscopes, weighing machines, muscle testers, lung testers, fortune telling machines, palm reading machines, game machines or machines or devices of like character  3) Subject to special permit of City Council. Initial application fee \$102.00  4) For locations where game machines are an accessory to the operation of the business. Annual tax \$161.00 (2 machines or less).	1) \$712.32 per year plus \$182.96 per machine. Initial tax of \$712.32 is an application fee.	1) \$715.17 per year plus \$183.69 per machine. Initial tax of \$715.17 is an application fee.
	2) Billiard/Pool Room		2) \$.199 per square foot per year plus \$153.52 per table and \$35.32 per table for each table in excess of four.	2) \$.200 per square foot per year plus \$154.13 per table and \$35.46 per table for each table in excess of four.
	3) Fortune Telling		3,4,5) \$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	3,4,5) \$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.
	4) Game Machines			
	5) Juke Boxes			

**City of Manhattan Beach  
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MAJOR BUSINESS CLASSIFICATION	CATEGORY	GENERAL INFORMATION	CURRENT TAX RATES	PROPOSED TAX RATES
<b>Retail</b>	1) Beer bars and cocktail lounges  2) Lunch wagon and ice cream trucks  3) Mail or phone order  4) Restaurants  5) Retail sales and service 6) Vending machines	2) County health permit required. Not to be parked longer than 10 minutes per location as per Section 14.36.130. Subject to approval of Police Department.      6) Applicant shall furnish location of all machines owned, operated or serviced within the city. Applicant shall place his name and address on each machine. An official city sticker shall be affixed in a conspicuous place to each machine.	1) \$.339 per square foot per year  2) \$274.28 per annum per vehicle  3) \$107.32 per year  4) \$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00  \$.339 per square foot for cocktail/lounge area only  5,6) \$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	1) \$.340 per square foot per year  2) \$275.36 per annum per vehicle  3) \$107.75 per year  4) \$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.  \$.340 per square foot for cocktail/lounge area only  5,6) \$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.
<b>Rental of Residential Property</b>	1) Condominiums  2) Dwelling units	1) Business license required per city conditional use permit – no tax payment is required for license.  2) Three or more units per lot.	2) \$18.99 per annum per unit. A credit of \$18.99 allowed for an owner-occupied unit.	2) \$19.07 per annum per unit. A credit of \$19.07 allowed for an owner-occupied unit.

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MAJOR BUSINESS CLASSIFICATION	CATEGORY	GENERAL INFORMATION	CURRENT TAX RATES	PROPOSED TAX RATES
<b>Research and Development</b>	Research and Development	Every person, firm or corporation with five or more employees engaged in the business of research and development for scientific purposes	Pay the greater of \$204.68 per annum plus \$28.44 per employee not to exceed \$7,923.00 or \$.483 per square foot per year for building area in excess of 5,000 square feet less 1/3 sales tax credited to the City of Manhattan Beach (whichever is greater) not to exceed \$163,592.00	Pay the greater of \$205.48 per annum plus \$28.55 per employee not to exceed \$7,954.00 or \$.485 per square foot per year for building area in excess of 5,000 square feet less 1/3 sales tax credited to the City of Manhattan Beach (whichever is greater) not to exceed \$164,246.00.
<b>Services</b>	1) Bath and massage  2) Gardeners  3) Handbills  4) Private patrol  5) Various installations and services (out of town)  6) Window cleaning	1) Non-refundable application fee – \$64.00. Change of location fee –\$17.00. A separate application must be submitted by a business for individual employees. Health clubs providing bath and massage service are subject to Section 4.36.160, however, gross receipts generated by bath or massage may be included with other receipts.     5) When not in connection with a fixed place of business within the city	1,4,6) \$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00  2) \$128.92 per annum per vehicle  3) \$152.80 per person per annum or \$37.36 per day per person.  5) \$102.24 per annum for the first \$36,400.00 of gross receipts (Manhattan Beach only) and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	1,4,6) \$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.  2) \$129.44 per annum per vehicle  3) \$153.40 per person per annum or \$37.51 per day per person.  5) \$102.64 per annum for the first \$36,500.00 of gross receipts (Manhattan Beach only) and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.

**City of Manhattan Beach**  
**Proposed – BUSINESS LICENSE TAX RESOLUTION 2011-2012**  
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MAJOR BUSINESS CLASSIFICATION	CATEGORY	GENERAL INFORMATION	CURRENT TAX RATES	PROPOSED TAX RATES
<b>Subcontractors</b>	1) Subcontractors 2) Minor construction	Every person engaged in the business or acting as a subcontractor (C2, C4, C6, C8, C9, C11, C12, C15, C16, C17, C20, C21, C23, C26, C27, C29, C32, C33, C34, C35, C38, C39, C42, C43, C50, C51, C54, C55, C57, C60, C61, and other classifications established by the State Contractors Board)	\$165.84 per annum	\$166.48 per annum
<b>Wholesale</b>	Wholesale	Every person engaged in the business of selling goods, wares or merchandise for the purpose of resale	\$204.68 per annum for the first \$59,800.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	\$205.48 per annum for the first \$60,000.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.

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**SPECIAL BUSINESS CATEGORIES**

MAJOR BUSINESS CLASSIFICATION	CATEGORY	GENERAL INFORMATION	CURRENT TAX RATES	PROPOSED TAX RATES
<b>Holiday Activities</b>	1) Xmas Tree Lots 2) Pumpkin Patches	Per season per location. \$113.00 refundable cleanup fee payable at time of application.	\$125.08	\$125.58
<b>Itinerant Vendors/Peddlers</b>	1) Solicitors, Peddlers 2) Itinerant Vendors, Dealers or Merchants	1) Agents or solicitors selling or soliciting or taking orders for the sale or furnishing of any goods, wares, merchandise or service when not in connection with a fixed place of business licensed within the city  2) Vendors, dealers or merchants shall include all persons who commence or conduct business by haranguing persons within the city or who use the various customary devices for attracting crowds and therewith recommending their goods, wares or merchandise and offering for sale or exchange.	1) \$550.04 per annum for a 5-man crew and \$89.04 per person in excess or \$89.04 per day per person. ** Subject to special permit from the Police Dept. to be first obtained.**  2) \$33.00 per day or \$352.72 per year. **Subject to special permit from the Police Dept. to be first obtained.**	1) \$552.24 per annum for a 5-man crew and \$89.40 per person in excess or \$89.40 per day per person. ** Subject to special permit from the Police Dept. to be first obtained.**  2) \$33.13 per day or \$354.12 per year. **Subject to special permit from the Police Dept. to be first obtained.**

**City of Manhattan Beach  
Proposed – BUSINESS LICENSE TAX RESOLUTION 2011 – 2012  
(Provided for in MBMC Section 6.01.290)**

MAJOR BUSINESS CLASSIFICATION	CATEGORY	GENERAL INFORMATION	CURRENT TAX RATES	PROPOSED TAX RATES
Special Events	1) Carnivals and amusements	1) For amusements, where an admission, fare, fee or charge is charged or made, or a collection or contribution received, such as exhibitions, shows, games, rides, tent performances, merry-go-rounds, carousels, chute-the-chutes, shooting galleries, ferris wheels, pig slides, ballgames, dart games, roller coasters, grunt derbies, whip rides, scooter rides, sideshows, illusions and other amusements or concessions similar in character to those named in this section; provided, however, that the license fee for pony rides for small children shall be \$196.00 per year where not to exceed 12 ponies are used and \$5.00 for each additional pony; and provided further that no permit for any amusement referred to in this section shall be issued without a special permit from the Council to be first obtained.	1) \$688.44 per day plus \$51.88 per day for each food booth	1) \$691.16 per day plus \$52.09 per day for each food booth
	2) One/two day shows	2) Every person or promoter engaged in the business of conducting one/two day shows and every participant or booth.	2) \$46.36 per day plus \$1.88 per day per booth	2) \$46.55 per day plus \$1.89 per day per booth
Transportation of Persons/Goods	1) Retail deliveries	1) For retail deliveries when not connected with a fixed place of business within the city.	1) \$102.24 per annum for the first \$36,400.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	1) \$102.64 per annum for the first \$36,500.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.
	2) Taxicabs	2) Taxicabs or other passenger vehicles for hire.	2) Subject to Franchise Fee	2) Subject to Franchise Fee.
	3) Wholesale deliveries	3) For wholesale deliveries when not connected with a fixed place of business within the city.	3) \$102.24 per annum for the first \$36,400.00 of gross receipts and \$1.88 per \$1,000.00 in excess thereof not to exceed \$7,923.00	3) \$102.64 per annum for the first \$36,500.00 of gross receipts and \$1.89 per \$1,000.00 in excess thereof not to exceed \$7,954.00.



**City of Manhattan Beach**  
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**SPECIAL BUSINESS CATEGORIES**

Additional Information:

1. **Penalties and Interest.** Assessed on understated fees per Section No. 6.01.290. The penalty for any deficiency determined by audit shall be 10% of the amount due plus interest of 1.5% for each month or part thereof beyond the due date of May 1st.
  
- 2a. **Parking and Business Improvement Area.** Pursuant to Ordinance No. 1375 – Area “A” the following additional levy of business tax is established on all businesses except commercial rental or lease property conducting their activities in the Areas.

Area A – Downtown Area – 80% of the ordinary business license tax not to exceed \$600.00
  
- 2b. **Parking and Business Improvement Area.** Pursuant to Ordinance No. 2071 – Area “B”.

Area B – North End Area – 80% of the ordinary business license tax not to exceed \$500.00
  
3. **Admissions Tax.** This shall be imposed upon each person attending a live sporting, theatrical or any amusement type of exhibition taking place within a non-public enclosure, stadium or building. The operator of such event shall be responsible for the collection and payment to the city of such tax along with an accountant as may be prescribed by the Director of Finance. The payment to the city is due within 10 days after the event takes place.

Amount of Tax – shall be the greater of:

- a) 8% of the admission price
- b) \$.35 per person

Exemptions – no tax shall be imposed upon:

- a) Bona fide employees of the management
- b) City officials on official business
- c) Members of the press in the performance of their duties
- d) Contractors in performance of their job
- e) Concessionaires
- f) Complimentary tickets

**City of Manhattan Beach**  
**Proposed – BUSINESS LICENSE TAX RESOLUTION 2011– 2012**  
**(Provided for in MBMC Section 6.01.290)**

**SPECIAL BUSINESS CATEGORIES**

4. **Consumer Price Index Adjustments.** Per Section No. 6.01.320, business license taxes provided for in above MBMC Section shall be adjusted annually commencing March 1, 1979, in accordance with the increase or decrease in the cost of living. All adjustments shall be based on the Bureau of Labor Statistics - Consumer Price Index for All Urban Consumers - All Items (1967 - 100) for the preceding September. When the Bureau of Labor Statistics changes the base year for reporting changes in the CPI, the annual change in CPI shall be based on the new base year.
  
5. **Providing Documentation to Support Gross Receipts.** All businesses paying a business license tax based on gross receipts are required to include and return documentation to support gross receipts with the renewal application. Documentation must be for the year on which the license tax is based. The documentation can be, but is not limited to, the following: Schedule C, income statement, profit and loss statement, financial statement, ledger sheet, declaration from taxpayer, notarized letter or State Board of Equalization return. If, in the opinion of the licensing authority, an alternate form of documentation is sufficient, then the alternate form can be supplied. If the tax return is incomplete or cannot be furnished with the business license tax renewal, an estimate shall be submitted and an adjustment will be made, if necessary, when the actual return has been completed and submitted to the licensing authority.
  
6. **Exemptions.** Per Section No. 6.01.190G, the City Manager shall have the authority to exempt businesses from paying business license tax and/or late penalties.
  
7. **Late Penalties.** Per Section No. 6.01.270, late penalties of 10% per month will apply to any businesses that pay the business license tax after April 30, 2011.

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
General Fund Expenditures By Department**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Department Name		Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
11	Management Services	2,173,544	190,706	778,830	26,945	1,367,768	37.07
12	Finance	2,715,008	252,712	1,287,101	12,400	1,415,507	47.86
13	Human Resources	994,475	64,744	303,648	11,500	679,327	31.69
14	Parks and Recreation	5,968,370	408,736	3,024,602	15,219	2,928,548	50.93
15	Police	19,888,037	1,972,532	9,858,476	1,425	10,028,137	49.58
16	Fire	9,445,086	952,199	4,849,566	17,475	4,578,045	51.53
17	Community Development	3,135,622	317,705	1,493,812	36,973	1,604,836	48.82
18	Public Works	5,574,471	535,940	2,555,791	51,810	2,966,870	46.78
100	General Fund	<u>49,894,614</u>	<u>4,695,272</u>	<u>24,151,827</u>	<u>173,748</u>	<u>25,569,039</u>	<u>48.75</u>

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund - Fund Summary**

Data Date 1/10/2011

Percent Year 50.00  
Fiscal Year 2011  
Month December

Fund No.	Fund Title	Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Amount	Percent Realized
100	General Fund	49,274,023	163,300	49,437,323	8,152,294	21,002,520	28,434,803	42.48
201	Street Lighting & Landscape Fund	397,245	-	397,245	148,327	151,997	245,248	38.26
205	Gas Tax Fund	990,295	-	990,295	3,387	440,575	549,720	44.49
210	Asset Forfeiture Fund	15,900	-	15,900	10,361	36,034	-20,134	226.63
211	Police Safety Grants Fund	900	-	900	181	32,080	-31,180	3,564.42
220	Federal & State Grants Fund	1,045,000	-1,251	1,043,749	-	-	1,043,749	0.00
230	Prop. A Fund	503,700	247,214	750,914	50,499	452,388	298,526	60.24
231	Prop. C Fund	417,300	-	417,300	44,585	211,472	205,828	50.68
232	AB 2766 Fund	44,400	-	44,400	11,494	12,090	32,310	27.23
233	Measure R	294,900	-	294,900	60,140	153,942	140,958	52.20
401	Capital Improvement Fund	1,232,470	735,934	1,968,404	82,342	578,228	1,390,176	29.38
402	Safety & Civic Center Construction Fund	-	-	-	-	-	-	0.00
403	Underground Assessment Districts	-	-	-	30	27	-27	0.00
501	Water Fund	10,316,200	-	10,316,200	433,156	4,555,569	5,760,631	44.16
502	Stormwater Fund	366,200	-	366,200	125,898	131,151	235,049	35.81
503	Wastewater Fund	3,049,730	-	3,049,730	151,297	1,238,155	1,811,575	40.60
510	Refuse Fund	4,076,480	-	4,076,480	338,317	2,020,215	2,056,265	49.56
520	Parking Fund	2,169,960	-	2,169,960	159,997	1,026,731	1,143,229	47.32
521	County Parking Lots Fund	528,890	-	528,890	20,207	250,453	278,437	47.35
522	State Pier and Parking Lot Fund	437,370	-	437,370	24,175	238,614	198,756	54.56
601	Insurance Reserve Fund	3,750,381	-	3,750,381	308,366	1,864,414	1,885,967	49.71
605	Information Systems Fund	1,078,980	-	1,078,980	89,843	539,058	539,922	49.96
610	Fleet Management Fund	1,135,486	-	1,135,486	94,678	508,657	626,829	44.80
615	Building Maintenance & Operations Fund	1,220,834	-	1,220,834	82,149	494,509	726,325	40.51
710	Special Assessment Redemption Fund	977,361	-	977,361	383,843	402,780	574,581	41.21
801	Pension Trust Fund	140,910	-	140,910	2,156	5,706	135,204	4.05
803	UAD Loan Program	-	-	-	-	-	-	0.00
Grand Total - All City Funds		<u>83,464,915</u>	<u>1,145,197</u>	<u>84,610,112</u>	<u>10,777,722</u>	<u>36,347,360</u>	<u>48,262,752</u>	<u>42.96</u>

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year 50.00  
Fiscal Year 2011  
Month December  
Period 6

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
100-3101	C.Yr Secured Property Tax	15,361,500	-	15,361,500	6,460,921	6,460,921	8,900,579	42.06
100-3102	C.Yr Unsecured Property Tax	735,000	-	735,000	-	649,628	85,372	88.38
100-3103	P.Yr Secured Prop Tax	550,000	-	550,000	(7,506)	256,884	293,116	46.71
100-3104	P.Yr Unsecured Property Tax	20,000	-	20,000	-	-	20,000	0.00
100-3105	Supplemental Property Tax	80,000	-	80,000	(8,790)	3,309	76,691	4.14
100-3106	Property Tax Collection Admin	(320,925)	-	(320,925)	(354,551)	(354,551)	33,626	110.48
100-3107	Interest & Penalties	190,000	-	190,000	-	72,121	117,879	37.96
100-3108	Property Tax In Lieu of VLF	2,913,217	-	2,913,217	-	-	2,913,217	0.00
<b>-PROPERTY TAX-</b>		<b>19,528,792</b>	<b>-</b>	<b>19,528,792</b>	<b>6,090,073</b>	<b>7,088,312</b>	<b>12,440,480</b>	<b>36.30</b>
100-3201	Sales & Use Tax	5,610,000	-	5,610,000	754,116	3,179,452	2,430,548	56.67
100-3202	Franchise Tax	1,170,225	-	1,170,225	20	431,320	738,905	36.86
100-3203	Transient Occupancy Tax	2,652,000	-	2,652,000	185,723	1,415,280	1,236,720	53.37
100-3204	Business License Tax	2,550,000	-	2,550,000	19,557	200,628	2,349,372	7.87
100-3205	Property Tax In Lieu of Sales Tax	1,870,000	-	1,870,000	-	-	1,870,000	0.00
100-3206	Real Estate Transfer Tax	310,000	-	310,000	20,848	172,450	137,550	55.63
100-3207	PSAF Sales Tax	275,400	-	275,400	25,753	91,077	184,323	33.07
100-3215	Vacation Rental TOT	54,300	-	54,300	2,955	36,440	17,860	67.11
<b>-OTHER TAXES &amp; ASSESSMENTS-</b>		<b>14,491,925</b>	<b>-</b>	<b>14,491,925</b>	<b>1,008,971</b>	<b>5,526,647</b>	<b>8,965,278</b>	<b>38.14</b>
100-3301	Building Permits	575,000	-	575,000	77,164	377,856	197,144	65.71
100-3302	Other Construction Permits	230,000	-	230,000	18,791	108,504	121,496	47.18
100-3303	Home Occupation Permits	4,000	-	4,000	415	2,820	1,180	70.50
100-3304	Fire Code Permits	24,000	-	24,000	1,704	8,861	15,139	36.92
100-3306	Outdoor Facilities Permits	2,500	-	2,500	200	690	1,810	27.60
100-3307	Film Permits	90,000	-	90,000	3,300	25,350	64,650	28.17
100-3309	Building Permits Surcharge	43,000	-	43,000	4,603	31,813	11,187	73.98
100-3350	Other Permits	1,950	-	1,950	-	895	1,055	45.90
100-3361	Animal Licence Fees	50,000	-	50,000	1,390	46,470	3,530	92.94
<b>-LICENCES &amp; PERMITS-</b>		<b>1,020,450</b>	<b>-</b>	<b>1,020,450</b>	<b>107,567</b>	<b>603,260</b>	<b>417,190</b>	<b>59.12</b>
100-3401	Vehicle Code Fines	275,000	-	275,000	16,402	173,872	101,128	63.23

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
100-3402	Parking Citations	2,450,000	-	2,450,000	229,504	1,329,643	1,120,357	54.27
100-3421	Municipal Code Fines	28,000	-	28,000	3,100	17,055	10,945	60.91
-FINES-		<u>2,753,000</u>	-	<u>2,753,000</u>	<u>249,006</u>	<u>1,520,569</u>	<u>1,232,431</u>	<u>55.23</u>
100-3501	Interest Earnings	450,000	-	450,000	(25,928)	271,659	178,341	60.37
100-3505	Installment Fund Earnings	3,000	-	3,000	-	-	3,000	0.01
100-3506	Unrealized Investment Gain/Loss	-	-	-	-	(174,077)	174,077	0.00
100-3511	Misc. Rents & Concessions	27,378	-	27,378	3,625	16,438	10,940	60.04
100-3512	Golf Course Rent	12,000	-	12,000	-	6,205	5,795	51.71
100-3513	Tennis Club Complex Minimum Rent	250,000	-	250,000	20,917	126,545	123,455	50.62
100-3514	Tennis Club Percentage Rent	135,900	-	135,900	10,000	60,000	75,900	44.15
100-3515	Marriott Hotel Percentage Rent	560,000	-	560,000	-	308,174	251,826	55.03
100-3516	Marriott Hotel Minimum Rent	400,000	-	400,000	33,333	200,000	200,000	50.00
100-3517	Wireless Communication Income	117,502	-	117,502	6,686	55,119	62,383	46.91
100-3518	1334 Parkview - Office Building Rent	39,400	-	39,400	3,283	19,863	19,537	50.41
100-3519	Metlox Lease Payments	341,000	-	341,000	20,083	120,500	220,500	35.34
100-3520	Investment Amortization	-	-	-	(55,395)	(55,395)	55,395	0.00
100-3531	Tennis Club Parking Lot Lease	30,090	-	30,090	2,507	15,170	14,920	50.42
100-3532	Mall Parking Lot Lease	117,000	-	117,000	12,734	76,402	40,598	65.30
100-3533	Post Office Lease	21,180	-	21,180	1,765	10,591	10,589	50.00
100-3534	Library Parking Lot Lease	6,270	-	6,270	522	3,134	3,136	49.99
-INTEREST & RENTS-		<u>2,510,720</u>	-	<u>2,510,720</u>	<u>34,133</u>	<u>1,060,329</u>	<u>1,450,391</u>	<u>42.23</u>
100-3601	Vehicle in Lieu	96,900	-	96,900	3,956	61,117	35,783	63.07
100-3602	Homeowners Property Tax Relief	150,000	-	150,000	22,268	22,268	127,732	14.85
100-3604	State Mandated Cost Reimb	-	-	-	11,451	11,451	(11,451)	0.00
100-3605	BCHD Grant	29,359	-	29,359	-	29,359	-	100.00
100-3607	STC Reimbursement	2,000	-	2,000	-	281	1,719	14.04
100-3608	P.O.S.T. Reimbursement	20,000	-	20,000	1,713	4,659	15,341	23.29
100-3613	Miscellaneous Grants	-	7,500	7,500	-	28,411	(20,911)	378.81
100-3618	Federal Grant Programs	-	155,800	155,800	-	-	155,800	0.00

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
<b>-FROM OTHER AGENCIES-</b>		<b>298,259</b>	<b>163,300</b>	<b>461,559</b>	<b>39,388</b>	<b>157,545</b>	<b>304,014</b>	<b>34.13</b>
100-3702	Building Record Report Fees	35,000	-	35,000	1,870	16,362	18,639	46.75
100-3703	Building Plan Check Fees	470,000	-	470,000	90,149	401,735	68,265	85.48
100-3704	Planning Filing Fees	70,000	-	70,000	7,556	55,568	14,432	79.38
100-3705	Comm. Dev. Digital Doc. Fee	76,800	-	76,800	4,728	33,639	43,162	43.80
100-3706	Reproduction Fees	7,000	-	7,000	761	3,364	3,636	48.06
100-3707	Police False Alarm Fees	85,000	-	85,000	14,315	50,395	34,605	59.29
100-3708	Police Service Fees	32,000	-	32,000	2,871	15,423	16,577	48.20
100-3709	Special Event O.T. Reimb	65,000	-	65,000	9,129	26,624	38,376	40.96
100-3710	DUI Cost Recovery	35,000	-	35,000	-	21,014	13,986	60.04
100-3711	Booking Fee	2,500	-	2,500	-	220	2,280	8.80
100-3712	Boot Removal	7,000	-	7,000	285	2,660	4,340	38.00
100-3713	Vehicle Release Fee	102,000	-	102,000	8,087	46,135	55,865	45.23
100-3714	Animal Impound & Trap Rental Fees	5,000	-	5,000	660	2,035	2,965	40.70
100-3715	Fire Services Fees	45,000	-	45,000	2,767	108,098	(63,098)	240.22
100-3716	Ambulance Fees	840,000	-	840,000	67,520	331,563	508,437	39.47
100-3717	Fire Plan Check	55,000	-	55,000	3,695	25,932	29,068	47.15
100-3718	Studio On-Site Fire Inspection Fees	185,000	-	185,000	5,784	41,350	143,650	22.35
100-3719	Public Works Misc Fees	15,000	-	15,000	6,510	14,876	124	99.17
100-3723	Fire False Alarm Fees	8,000	-	8,000	-	-	8,000	0.00
100-3734	Right of Way Permits	150,000	-	150,000	7,691	117,730	32,271	78.49
100-3735	Inter-City Median Maintenance	6,600	-	6,600	-	5,802	798	87.90
100-3736	Sepulveda Sweeping Reimb	-	-	-	-	1,634	(1,634)	0.00
100-3751	Parking Meters	134,000	-	134,000	-	-	134,000	0.00
100-3771	Facility & Parks Reservations *	263,587	-	263,587	56,882	215,324	48,263	81.69
100-3772	Special Activities Classes *	393,577	-	393,577	8,240	235,816	157,761	59.92
100-3773	Special Events *	200,456	-	200,456	4,253	92,405	108,051	46.10
100-3774	Tennis Operations *	146,555	-	146,555	6,463	64,308	82,247	43.88
100-3776	Arts/Education Classes *	301,850	-	301,850	6,262	172,715	129,135	57.22
100-3778	Sports Leagues & Tournaments *	620,450	-	620,450	7,772	338,854	281,596	54.61
100-3779	Sports Classes *	559,872	-	559,872	12,501	548,405	11,467	97.95

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
100-3780	Swimming Classes *	417,000	-	417,000	554	308,056	108,944	73.87
100-3782	Banner Hanging	-	-	-	407	407	(407)	0.00
100-3784	Concerts in the Park*	10,000	-	10,000	-	12,979	(2,979)	129.79
100-3786	Older Adult Activities *	62,000	-	62,000	7,459	28,006	33,994	45.17
100-3791	Returned Check Fees	350	-	350	-	200	150	57.14
100-3793	Business License Processing Fee	-	-	-	18	30	(30)	0.00
-SERVICES-		<u>5,406,597</u>	<u>-</u>	<u>5,406,597</u>	<u>345,192</u>	<u>3,339,661</u>	<u>2,066,936</u>	<u>61.77</u>
100-3896	Operating Service Transfers	3,034,280	-	3,034,280	268,977	1,521,298	1,512,982	50.14
-INTERFUND CHARGES & TRANSFERS-		<u>3,034,280</u>	<u>-</u>	<u>3,034,280</u>	<u>268,977</u>	<u>1,521,298</u>	<u>1,512,982</u>	<u>50.14</u>
100-3902	Sale of Property	1,500	-	1,500	185	312	1,188	20.81
100-3904	AP Discounts Taken	-	-	-	37	75	(75)	0.00
100-3905	Cash Over/Short	-	-	-	-	(30)	30	0.00
100-3913	W Comp Salary Continuation	50,000	-	50,000	8,420	69,052	(19,052)	138.10
100-3941	Reimb- Phone charges Employees	-	-	-	-	200	(200)	0.00
100-3943	Reimb- Phone charges SBRPCA	5,500	-	5,500	264	2,840	2,660	51.64
100-3945	Reimb Ca Emplr Ret Ben Trst	60,000	-	60,000	-	-	60,000	0.00
100-3994	P-Card Incentive	6,000	-	6,000	-	2,908	3,092	48.47
100-3995	Miscellaneous Revenues	20,000	-	20,000	79	22,309	(2,309)	111.54
100-3996	City Funds Exchange	87,000	-	87,000	-	87,233	(233)	100.27
-MISCELLANEOUS REVENUE-		<u>230,000</u>	<u>-</u>	<u>230,000</u>	<u>8,985</u>	<u>184,900</u>	<u>45,100</u>	<u>80.39</u>
	<b>General Fund</b>	<u>49,274,023</u>	<u>163,300</u>	<u>49,437,323</u>	<u>8,152,294</u>	<u>21,002,520</u>	<u>28,434,803</u>	<u>42.48</u>



Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
201-3211	C.Yr Assessments	265,000	-	265,000	148,327	148,327	116,673	55.97
201-3212	P.Yr Assessments	5,800	-	5,800	-	3,661	2,139	63.13
201-3213	C.Yr Streetscape Assessments	107,000	-	107,000	-	-	107,000	0.00
201-3214	P.Yr Streetscape Assessments	1,000	-	1,000	-	-	1,000	0.00
<b>-OTHER TAXES &amp; ASSESSMENTS-</b>		<b>378,800</b>	<b>-</b>	<b>378,800</b>	<b>148,327</b>	<b>151,988</b>	<b>226,812</b>	<b>40.12</b>
201-3899	Transfers In	18,445	-	18,445	-	-	18,445	0.00
<b>-INTERFUND CHARGES &amp; TRANSFERS-</b>		<b>18,445</b>	<b>-</b>	<b>18,445</b>	<b>-</b>	<b>-</b>	<b>18,445</b>	<b>-</b>
201-3904	AP Discounts Taken	-	-	-	-	9	(9)	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>9</b>	<b>(9)</b>	<b>-</b>
<b>Street Lighting &amp; Landscape Fund</b>		<b>397,245</b>	<b>-</b>	<b>397,245</b>	<b>148,327</b>	<b>151,997</b>	<b>245,248</b>	<b>38.26</b>

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
205-3501	Interest Earnings	22,625	-	22,625	3,387	19,050	3,575	84.20
205-3506	Unrealized Investment Gain/Loss	-	-	-	-	(8,269)	8,269	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>22,625</b>	<b>-</b>	<b>22,625</b>	<b>3,387</b>	<b>10,781</b>	<b>11,844</b>	<b>47.65</b>
205-3609	State Gas Tax 2105	195,560	-	195,560	-	100,106	95,454	51.19
205-3610	State Gas Tax 2106	118,660	-	118,660	-	63,437	55,223	53.46
205-3611	State Gas Tax 2107	266,550	-	266,550	-	140,648	125,902	52.77
205-3614	SB 821 TDA	20,000	-	20,000	-	-	20,000	0.00
205-3634	Prop 42 Traffic Congestion Relief	366,900	-	366,900	-	92,091	274,809	25.10
205-3637	State Gas Tax 2103	-	-	-	-	33,512	(33,512)	0.00
<b>-FROM OTHER AGENCIES-</b>		<b>967,670</b>	<b>-</b>	<b>967,670</b>	<b>-</b>	<b>429,794</b>	<b>537,876</b>	<b>44.42</b>
	<b>Streets, Highways &amp; Sidewalks</b>	<b>990,295</b>	<b>-</b>	<b>990,295</b>	<b>3,387</b>	<b>440,575</b>	<b>549,720</b>	<b>44.49</b>

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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
210-3501	Interest Earnings	15,900	-	15,900	1,360	7,632	8,268	48.00
210-3506	Unrealized Investment Gain/Loss	-	-	-	-	(4,873)	4,873	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>15,900</b>	<b>-</b>	<b>15,900</b>	<b>1,360</b>	<b>2,758</b>	<b>13,142</b>	<b>17.35</b>
210-3615	Fed Forfeitures - D.O.J Regional	-	-	-	8,395	13,559	(13,559)	0.00
210-3627	State Forfeitures - Regional	-	-	-	606	18,623	(18,623)	0.00
210-3629	Fed Forfeitures - Treas Regional	-	-	-	-	1,094	(1,094)	0.00
<b>-FROM OTHER AGENCIES-</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>9,001</b>	<b>33,275</b>	<b>(33,275)</b>	<b>-</b>
	<b>Asset Forfeiture Fund</b>	<b>15,900</b>	<b>-</b>	<b>15,900</b>	<b>10,361</b>	<b>36,034</b>	<b>(20,134)</b>	<b>226.63</b>

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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
211-3501	Interest Earnings	900	-	900	181	1,364	(464)	151.51
211-3506	Unrealized Investment Gain/Loss	-	-	-	-	(642)	642	0.00
	<b>-INTEREST &amp; RENTS-</b>	<b>900</b>	<b>-</b>	<b>900</b>	<b>181</b>	<b>722</b>	<b>178</b>	<b>80.18</b>
211-3617	State Grant Programs	-	-	-	-	31,358	(31,358)	0.00
	<b>-FROM OTHER AGENCIES-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>31,358</b>	<b>(31,358)</b>	<b>-</b>
	<b>Police Safety Grants Fund</b>	<b>900</b>	<b>-</b>	<b>900</b>	<b>181</b>	<b>32,080</b>	<b>(31,180)</b>	<b>3564.42</b>

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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
220-3623	Grant Administration	1,045,000	(1,251)	1,043,749	-	-	1,043,749	0.00
	-FROM OTHER AGENCIES-	1,045,000	(1,251)	1,043,749	-	-	1,043,749	-
	Federal & State Grants Fund	1,045,000	(1,251)	1,043,749	-	-	1,043,749	0.00

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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
230-3221	Transit Sales Tax	480,000	-	480,000	49,455	246,267	233,733	51.31
<b>-OTHER TAXES &amp; ASSESSMENTS-</b>		<b>480,000</b>	<b>-</b>	<b>480,000</b>	<b>49,455</b>	<b>246,267</b>	<b>233,733</b>	<b>51.31</b>
230-3501	Interest Earnings	-	-	-	143	169	(169)	0.00
230-3506	Unrealized Investment Gain/Loss	-	-	-	-	(291)	291	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>143</b>	<b>(122)</b>	<b>122</b>	<b>-</b>
230-3760	Dial-A-Ride Fares	4,000	-	4,000	323	2,680	1,320	67.01
230-3761	Bus Pass Subsidies	6,000	-	6,000	579	3,563	2,438	59.38
<b>-SERVICES-</b>		<b>10,000</b>	<b>-</b>	<b>10,000</b>	<b>901</b>	<b>6,243</b>	<b>3,757</b>	<b>62.43</b>
230-3945	Reimb Ca Emplr Ret Ben Trst	700	-	700	-	-	700	0.00
230-3995	Miscellaneous Revenues	13,000	-	13,000	-	-	13,000	0.00
230-3996	City Funds Exchange	-	247,214	247,214	-	200,000	47,214	80.90
<b>-MISCELLANEOUS REVENUE-</b>		<b>13,700</b>	<b>247,214</b>	<b>260,914</b>	<b>-</b>	<b>200,000</b>	<b>60,914</b>	<b>76.65</b>
<b>Prop. A Fund</b>		<b>503,700</b>	<b>247,214</b>	<b>750,914</b>	<b>50,499</b>	<b>452,388</b>	<b>298,526</b>	<b>60.24</b>

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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
231-3221	Transit Sales Tax	388,000	-	388,000	41,044	205,129	182,871	52.87
	<b>-OTHER TAXES &amp; ASSESSMENTS-</b>	<b>388,000</b>	<b>-</b>	<b>388,000</b>	<b>41,044</b>	<b>205,129</b>	<b>182,871</b>	<b>52.87</b>
231-3501	Interest Earnings	29,300	-	29,300	3,541	20,373	8,927	69.53
231-3506	Unrealized Investment Gain/Loss	-	-	-	-	(14,030)	14,030	0.00
	<b>-INTEREST &amp; RENTS-</b>	<b>29,300</b>	<b>-</b>	<b>29,300</b>	<b>3,541</b>	<b>6,343</b>	<b>22,957</b>	<b>21.65</b>
	<b>Prop. C Fund</b>	<b>417,300</b>	<b>-</b>	<b>417,300</b>	<b>44,585</b>	<b>211,472</b>	<b>205,828</b>	<b>50.68</b>

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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
232-3501	Interest Earnings	4,400	-	4,400	445	2,452	1,948	55.73
232-3506	Unrealized Investment Gain/Loss	-	-	-	-	(1,412)	1,412	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>4,400</b>	<b>-</b>	<b>4,400</b>	<b>445</b>	<b>1,040</b>	<b>3,360</b>	<b>23.64</b>
232-3621	AB 2766 Air Quality	40,000	-	40,000	11,049	11,049	28,951	27.62
<b>-FROM OTHER AGENCIES-</b>		<b>40,000</b>	<b>-</b>	<b>40,000</b>	<b>11,049</b>	<b>11,049</b>	<b>28,951</b>	<b>27.62</b>
	<b>AB 2766 Fund</b>	<b>44,400</b>	<b>-</b>	<b>44,400</b>	<b>11,494</b>	<b>12,090</b>	<b>32,310</b>	<b>27.23</b>



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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
233-3224	Measure R Sales Tax	288,000	-	288,000	59,710	152,306	135,694	52.88
	<b>-OTHER TAXES &amp; ASSESSMENTS-</b>	<b>288,000</b>	<b>-</b>	<b>288,000</b>	<b>59,710</b>	<b>152,306</b>	<b>135,694</b>	<b>52.88</b>
233-3501	Interest Earnings	6,900	-	6,900	430	1,975	4,925	28.62
233-3506	Unrealized Investment Gain/Loss	-	-	-	-	(339)	339	0.00
	<b>-INTEREST &amp; RENTS-</b>	<b>6,900</b>	<b>-</b>	<b>6,900</b>	<b>430</b>	<b>1,636</b>	<b>5,264</b>	<b>23.72</b>
	<b>Measure R</b>	<b>294,900</b>	<b>-</b>	<b>294,900</b>	<b>60,140</b>	<b>153,942</b>	<b>140,958</b>	<b>52.20</b>

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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
401-3203	Transient Occupancy Tax	468,000	-	468,000	32,775	249,755	218,245	53.37
	<b>-OTHER TAXES &amp; ASSESSMENTS-</b>	<b>468,000</b>	<b>-</b>	<b>468,000</b>	<b>32,775</b>	<b>249,755</b>	<b>218,245</b>	<b>53.37</b>
401-3308	Park Development/Quimby Fees	7,000	-	7,000	3,634	3,634	3,366	51.91
	<b>-LICENCES &amp; PERMITS-</b>	<b>7,000</b>	<b>-</b>	<b>7,000</b>	<b>3,634</b>	<b>3,634</b>	<b>3,366</b>	<b>51.91</b>
401-3402	Parking Citations	139,170	-	139,170	7,684	59,940	79,230	43.07
	<b>-FINES-</b>	<b>139,170</b>	<b>-</b>	<b>139,170</b>	<b>7,684</b>	<b>59,940</b>	<b>79,230</b>	<b>43.07</b>
401-3503	Bond Reserve Fund Earnings	37,000	-	37,000	-	-	37,000	0.00
	<b>-INTEREST &amp; RENTS-</b>	<b>37,000</b>	<b>-</b>	<b>37,000</b>	<b>-</b>	<b>-</b>	<b>37,000</b>	<b>-</b>
401-3613	Miscellaneous Grants	-	735,934	735,934	-	-	735,934	0.00
	<b>-FROM OTHER AGENCIES-</b>	<b>-</b>	<b>735,934</b>	<b>735,934</b>	<b>-</b>	<b>-</b>	<b>735,934</b>	<b>-</b>
401-3751	Parking Meters	581,300	-	581,300	38,250	264,898	316,402	45.57
	<b>-SERVICES-</b>	<b>581,300</b>	<b>-</b>	<b>581,300</b>	<b>38,250</b>	<b>264,898</b>	<b>316,402</b>	<b>45.57</b>
	<b>Capital Improvement Fund</b>	<b>1,232,470</b>	<b>735,934</b>	<b>1,968,404</b>	<b>82,342</b>	<b>578,228</b>	<b>1,390,176</b>	<b>29.38</b>

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403-3501	Interest Earnings	-	-	-	30	213	(213)	0.00
403-3504	Construction/Escrow Fund Earnings	-	-	-	-	4	(4)	0.00
403-3506	Unrealized Investment Gain/Loss	-	-	-	-	(190)	190	0.00
<b>-INTEREST &amp; RENTS-</b>		-	-	-	30	27	(27)	-
	<b>Underground Assessment Districts</b>	-	-	-	30	27	(27)	0.00

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Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
501-3501	Interest Earnings	67,300	-	67,300	7,632	42,713	24,587	63.47
501-3503	Bond Reserve Fund Earnings	3,900	-	3,900	-	1,669	2,231	42.78
501-3505	Installment Fund Earnings	-	-	-	-	2	(2)	0.00
501-3506	Unrealized Investment Gain/Loss	-	-	-	-	(30,541)	30,541	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>71,200</b>	<b>-</b>	<b>71,200</b>	<b>7,632</b>	<b>13,843</b>	<b>57,357</b>	<b>19.44</b>
501-3737	Utility Service Charges	10,134,000	-	10,134,000	474,508	4,470,909	5,663,091	44.12
501-3738	Utility Connection Fees	48,000	-	48,000	3,909	30,210	17,790	62.94
501-3740	Meter Installation	28,000	-	28,000	763	14,530	13,470	51.89
501-3746	Penalties	20,000	-	20,000	3,742	17,246	2,754	86.23
<b>-SERVICES-</b>		<b>10,230,000</b>	<b>-</b>	<b>10,230,000</b>	<b>482,922</b>	<b>4,532,896</b>	<b>5,697,105</b>	<b>44.31</b>
501-3902	Sale of Property	2,000	-	2,000	-	7,745	(5,745)	387.25
501-3945	Reimb Ca Emplr Ret Ben Trst	3,000	-	3,000	-	-	3,000	0.00
501-3995	Miscellaneous Revenues	10,000	-	10,000	(57,398)	1,085	8,915	10.85
<b>-MISCELLANEOUS REVENUE-</b>		<b>15,000</b>	<b>-</b>	<b>15,000</b>	<b>(57,398)</b>	<b>8,830</b>	<b>6,170</b>	<b>58.87</b>
<b>Water Fund</b>		<b>10,316,200</b>	<b>-</b>	<b>10,316,200</b>	<b>433,156</b>	<b>4,555,569</b>	<b>5,760,631</b>	<b>44.16</b>

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502-3501	Interest Earnings	23,000	-	23,000	1,995	11,140	11,860	48.44
502-3506	Unrealized Investment Gain/Loss	-	-	-	-	(6,797)	6,797	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>23,000</b>	<b>-</b>	<b>23,000</b>	<b>1,995</b>	<b>4,344</b>	<b>18,656</b>	<b>18.89</b>
502-3737	Utility Service Charges	343,000	-	343,000	123,903	126,807	216,193	36.97
<b>-SERVICES-</b>		<b>343,000</b>	<b>-</b>	<b>343,000</b>	<b>123,903</b>	<b>126,807</b>	<b>216,193</b>	<b>36.97</b>
502-3945	Reimb Ca Emplr Ret Ben Trst	200	-	200	-	-	200	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>200</b>	<b>-</b>	<b>200</b>	<b>-</b>	<b>-</b>	<b>200</b>	<b>-</b>
	<b>Stormwater Fund</b>	<b>366,200</b>	<b>-</b>	<b>366,200</b>	<b>125,898</b>	<b>131,151</b>	<b>235,049</b>	<b>35.81</b>

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503-3351	Fats, Oil, Grease Permit	24,360	-	24,360	-	696	23,664	2.86
<b>-LICENCES &amp; PERMITS-</b>		<b>24,360</b>	<b>-</b>	<b>24,360</b>	<b>-</b>	<b>696</b>	<b>23,664</b>	<b>2.86</b>
503-3501	Interest Earnings	7,800	-	7,800	1,590	7,946	(146)	101.87
503-3503	Bond Reserve Fund Earnings	1,870	-	1,870	-	821	1,049	43.90
503-3505	Installment Fund Earnings	-	-	-	-	1	(1)	0.00
503-3506	Unrealized Investment Gain/Loss	-	-	-	-	(3,940)	3,940	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>9,670</b>	<b>-</b>	<b>9,670</b>	<b>1,590</b>	<b>4,828</b>	<b>4,842</b>	<b>49.93</b>
503-3737	Utility Service Charges	2,982,000	-	2,982,000	145,567	1,209,675	1,772,325	40.57
503-3738	Utility Connection Fees	28,000	-	28,000	2,943	17,546	10,455	62.66
503-3746	Penalties	5,000	-	5,000	1,194	5,407	(407)	108.14
<b>-SERVICES-</b>		<b>3,015,000</b>	<b>-</b>	<b>3,015,000</b>	<b>149,704</b>	<b>1,232,627</b>	<b>1,782,373</b>	<b>40.88</b>
503-3904	AP Discounts Taken	-	-	-	3	3	(3)	0.00
503-3945	Reimb Ca Emplr Ret Ben Trst	700	-	700	-	-	700	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>700</b>	<b>-</b>	<b>700</b>	<b>3</b>	<b>3</b>	<b>697</b>	<b>0.47</b>
<b>Wastewater Fund</b>		<b>3,049,730</b>	<b>-</b>	<b>3,049,730</b>	<b>151,297</b>	<b>1,238,155</b>	<b>1,811,575</b>	<b>40.60</b>

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510-3501	Interest Earnings	10,180	-	10,180	835	5,061	5,119	49.71
510-3506	Unrealized Investment Gain/Loss	-	-	-	-	(4,332)	4,332	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>10,180</b>	<b>-</b>	<b>10,180</b>	<b>835</b>	<b>729</b>	<b>9,451</b>	<b>7.16</b>
510-3613	Miscellaneous Grants	-	-	-	-	7,947	(7,947)	0.00
<b>-FROM OTHER AGENCIES-</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>7,947</b>	<b>(7,947)</b>	<b>-</b>
510-3742	Residential Refuse Fee	1,910,000	-	1,910,000	159,713	954,888	955,112	49.99
510-3743	Commercial Refuse Fee	1,199,000	-	1,199,000	98,878	589,600	609,400	49.17
510-3744	Admin Fees	535,000	-	535,000	44,581	266,270	268,730	49.77
510-3746	Penalties	8,000	-	8,000	1,157	5,478	2,522	68.48
510-3747	Recycling	27,000	-	27,000	-	-	27,000	0.00
510-3748	Street Sweeping	366,000	-	366,000	31,690	184,450	181,550	50.40
510-3750	Waste Management Plan	21,000	-	21,000	1,464	10,854	10,147	51.68
<b>-SERVICES-</b>		<b>4,066,000</b>	<b>-</b>	<b>4,066,000</b>	<b>337,482</b>	<b>2,011,539</b>	<b>2,054,461</b>	<b>49.47</b>
510-3945	Reimb Ca Emplr Ret Ben Trst	300	-	300	-	-	300	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>300</b>	<b>-</b>	<b>300</b>	<b>-</b>	<b>-</b>	<b>300</b>	<b>-</b>
<b>Refuse Fund</b>		<b>4,076,480</b>	<b>-</b>	<b>4,076,480</b>	<b>338,317</b>	<b>2,020,215</b>	<b>2,056,265</b>	<b>49.56</b>

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
520-3209	BID- Downtown (License Surcharge)	100,000	-	100,000	-	4,495	95,505	4.49
520-3210	BID- North MB (License Surcharge)	23,000	-	23,000	-	942	22,058	4.09
<b>-OTHER TAXES &amp; ASSESSMENTS-</b>		<b>123,000</b>	<b>-</b>	<b>123,000</b>	<b>-</b>	<b>5,436</b>	<b>117,564</b>	<b>4.42</b>
520-3501	Interest Earnings	4,500	-	4,500	2,336	12,784	(8,284)	284.08
520-3503	Bond Reserve Fund Earnings	10,000	-	10,000	-	6,419	3,581	64.19
520-3506	Unrealized Investment Gain/Loss	-	-	-	-	(6,622)	6,622	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>14,500</b>	<b>-</b>	<b>14,500</b>	<b>2,336</b>	<b>12,581</b>	<b>1,919</b>	<b>86.76</b>
520-3751	Parking Meters	1,661,000	-	1,661,000	123,735	906,771	754,229	54.59
520-3752	Parking Lot Spaces	160,000	-	160,000	30,272	71,762	88,238	44.85
520-3758	Cash Key Parking Program	210,000	-	210,000	2,548	18,528	191,473	8.82
520-3759	Permit Parking Program	1,200	-	1,200	60	2,150	(950)	179.17
<b>-SERVICES-</b>		<b>2,032,200</b>	<b>-</b>	<b>2,032,200</b>	<b>156,615</b>	<b>999,211</b>	<b>1,032,989</b>	<b>49.17</b>
520-3904	AP Discounts Taken	-	-	-	71	71	(71)	0.00
520-3910	Contributions From Private Parties	-	-	-	-	2,599	(2,599)	0.00
520-3945	Reimb Ca Emplr Ret Ben Trst	260	-	260	-	-	260	0.00
520-3995	Miscellaneous Revenues	-	-	-	975	6,833	(6,833)	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>260</b>	<b>-</b>	<b>260</b>	<b>1,046</b>	<b>9,503</b>	<b>(9,243)</b>	<b>3,655.09</b>
<b>Parking Fund</b>		<b>2,169,960</b>	<b>-</b>	<b>2,169,960</b>	<b>159,997</b>	<b>1,026,731</b>	<b>1,143,229</b>	<b>47.32</b>



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**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year 50.00  
Fiscal Year 2011  
Month December  
Period 6

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
521-3753	Parking Lot B Meters	102,000	-	102,000	2,537	47,692	54,308	46.76
521-3754	Parking Lot C Meters	415,000	-	415,000	17,080	198,151	216,849	47.75
521-3755	Parking Lot B Spaces	1,800	-	1,800	60	870	930	48.33
521-3756	Parking Lot C Spaces	10,000	-	10,000	530	3,740	6,260	37.40
-SERVICES-		528,800	-	528,800	20,207	250,453	278,347	47.36
521-3945	Reimb Ca Emplr Ret Ben Trst	90	-	90	-	-	90	0.00
-MISCELLANEOUS REVENUE-		90	-	90	-	-	90	-
	<b>County Parking Lots Fund</b>	<b>528,890</b>	<b>-</b>	<b>528,890</b>	<b>20,207</b>	<b>250,453</b>	<b>278,437</b>	<b>47.35</b>

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**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year 50.00  
Fiscal Year 2011  
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Period 6

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
522-3501	Interest Earnings	30,080	-	30,080	3,158	17,688	12,392	58.80
522-3506	Unrealized Investment Gain/Loss	-	-	-	-	(10,660)	10,660	0.00
522-3511	Misc. Rents & Concessions	7,200	-	7,200	-	-	7,200	0.00
<b>-INTEREST &amp; RENTS-</b>		<b>37,280</b>	<b>-</b>	<b>37,280</b>	<b>3,158</b>	<b>7,028</b>	<b>30,252</b>	<b>18.85</b>
522-3751	Parking Meters	400,000	-	400,000	20,933	231,440	168,560	57.86
<b>-SERVICES-</b>		<b>400,000</b>	<b>-</b>	<b>400,000</b>	<b>20,933</b>	<b>231,440</b>	<b>168,560</b>	<b>57.86</b>
522-3904	AP Discounts Taken	-	-	-	84	146	(146)	0.00
522-3945	Reimb Ca Emplr Ret Ben Trst	90	-	90	-	-	90	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>90</b>	<b>-</b>	<b>90</b>	<b>84</b>	<b>146</b>	<b>(56)</b>	<b>162.37</b>
<b>State Pier and Parking Lot Fund</b>		<b>437,370</b>	<b>-</b>	<b>437,370</b>	<b>24,175</b>	<b>238,614</b>	<b>198,756</b>	<b>54.56</b>

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**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year 50.00  
Fiscal Year 2011  
Month December  
Period 6

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
601-3850	Workers Comp Billing	1,993,641	-	1,993,641	166,138	996,828	996,813	50.00
601-3851	Unemployment Billings	34,980	-	34,980	2,915	17,490	17,490	50.00
601-3852	Liability Insurance Billings	1,671,360	-	1,671,360	139,280	835,680	835,680	50.00
<b>-INTERFUND CHARGES &amp; TRANSFERS-</b>		<b>3,699,981</b>	<b>-</b>	<b>3,699,981</b>	<b>308,333</b>	<b>1,849,998</b>	<b>1,849,983</b>	<b>50.00</b>
601-3906	Insurance Recoveries/Dividends	50,000	-	50,000	-	1,198	48,802	2.40
601-3911	Cobra Payments	-	-	-	33	84	(84)	0.00
601-3914	Excess of SIR Reoveries	-	-	-	-	13,134	(13,134)	0.00
601-3945	Reimb Ca Emplr Ret Ben Trst	400	-	400	-	-	400	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>50,400</b>	<b>-</b>	<b>50,400</b>	<b>33</b>	<b>14,416</b>	<b>35,984</b>	<b>28.60</b>
	<b>Insurance Reserve Fund</b>	<b>3,750,381</b>	<b>-</b>	<b>3,750,381</b>	<b>308,366</b>	<b>1,864,414</b>	<b>1,885,967</b>	<b>49.71</b>

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**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year 50.00  
Fiscal Year 2011  
Month December  
Period 6

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
605-3860	Information System Charge	1,078,105	-	1,078,105	89,843	539,058	539,047	50.00
	-INTERFUND CHARGES & TRANSFERS-	1,078,105	-	1,078,105	89,843	539,058	539,047	50.00
605-3945	Reimb Ca Emplr Ret Ben Trst	875	-	875	-	-	875	0.00
	-MISCELLANEOUS REVENUE-	875	-	875	-	-	875	-
	<b>Information Systems Fund</b>	<b>1,078,980</b>	<b>-</b>	<b>1,078,980</b>	<b>89,843</b>	<b>539,058</b>	<b>539,922</b>	<b>49.96</b>

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
610-3854	Fleet Charge	1,109,611	-	1,109,611	94,678	489,907	619,704	44.15
<b>-INTERFUND CHARGES &amp; TRANSFERS-</b>		<b>1,109,611</b>	<b>-</b>	<b>1,109,611</b>	<b>94,678</b>	<b>489,907</b>	<b>619,704</b>	<b>44.15</b>
610-3902	Sale of Property	-	-	-	-	12,594	(12,594)	0.00
610-3942	Reimb- Gas charges MBSD	25,000	-	25,000	-	6,156	18,844	24.62
610-3945	Reimb Ca Emplr Ret Ben Trst	875	-	875	-	-	875	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>25,875</b>	<b>-</b>	<b>25,875</b>	<b>-</b>	<b>18,750</b>	<b>7,125</b>	<b>72.46</b>
<b>Fleet Management Fund</b>		<b>1,135,486</b>	<b>-</b>	<b>1,135,486</b>	<b>94,678</b>	<b>508,657</b>	<b>626,829</b>	<b>44.80</b>

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**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**  
Period **6**

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
615-3861	Building Maintenance	1,106,704	-	1,106,704	72,541	435,046	671,658	39.31
615-3862	Warehouse Sales	81,255	-	81,255	5,631	39,316	41,939	48.39
615-3863	Garage Sales	32,000	-	32,000	3,977	20,140	11,860	62.94
<b>-INTERFUND CHARGES &amp; TRANSFERS-</b>		<b>1,219,959</b>	<b>-</b>	<b>1,219,959</b>	<b>82,149</b>	<b>494,502</b>	<b>725,457</b>	<b>40.53</b>
615-3904	AP Discounts Taken	-	-	-	-	7	(7)	0.00
615-3945	Reimb Ca Emplr Ret Ben Trst	875	-	875	-	-	875	0.00
<b>-MISCELLANEOUS REVENUE-</b>		<b>875</b>	<b>-</b>	<b>875</b>	<b>-</b>	<b>7</b>	<b>868</b>	<b>0.80</b>
<b>Building Maintenance &amp; Operations Fun</b>		<b>1,220,834</b>	<b>-</b>	<b>1,220,834</b>	<b>82,149</b>	<b>494,509</b>	<b>726,325</b>	<b>40.51</b>

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**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year 50.00  
Fiscal Year 2011  
Month December  
Period 6

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
710-3211	C.Yr Assessments	977,361	-	977,361	383,843	402,762	574,599	41.21
	<b>-OTHER TAXES &amp; ASSESSMENTS-</b>	<b>977,361</b>	<b>-</b>	<b>977,361</b>	<b>383,843</b>	<b>402,762</b>	<b>574,599</b>	<b>41.21</b>
710-3503	Bond Reserve Fund Earnings	-	-	-	-	10	(10)	0.00
710-3505	Installment Fund Earnings	-	-	-	-	7	(7)	0.00
	<b>-INTEREST &amp; RENTS-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>17</b>	<b>(17)</b>	<b>-</b>
	<b>Special Assessment Redemption Fund</b>	<b>977,361</b>	<b>-</b>	<b>977,361</b>	<b>383,843</b>	<b>402,780</b>	<b>574,581</b>	<b>41.21</b>

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Revenue By Fund -Line Item**

Percent Year 50.00  
Fiscal Year 2011  
Month December  
Period 6

Account No.	Account Title	Annual Budget	Budget Adj.	Adjusted Budget	Current Month	YTD Actual	Unrealized Budget	Percent Realized
801-3501	Interest Earnings	34,710	-	34,710	2,156	16,447	18,263	47.38
801-3506	Unrealized Investment Gain/Loss	-	-	-	-	(10,742)	10,742	0.00
	<b>-INTEREST &amp; RENTS-</b>	<b>34,710</b>	<b>-</b>	<b>34,710</b>	<b>2,156</b>	<b>5,706</b>	<b>29,004</b>	<b>16.44</b>
801-3870	Contributions	67,200	-	67,200	-	-	67,200	0.00
	<b>-INTERFUND CHARGES &amp; TRANSFERS-</b>	<b>67,200</b>	<b>-</b>	<b>67,200</b>	<b>-</b>	<b>-</b>	<b>67,200</b>	<b>-</b>
801-3945	Reimb Ca Emplr Ret Ben Trst	39,000	-	39,000	-	-	39,000	0.00
	<b>-MISCELLANEOUS REVENUE-</b>	<b>39,000</b>	<b>-</b>	<b>39,000</b>	<b>-</b>	<b>-</b>	<b>39,000</b>	<b>-</b>
	<b>Pension Trust Fund</b>	<b>140,910</b>	<b>-</b>	<b>140,910</b>	<b>2,156</b>	<b>5,706</b>	<b>135,204</b>	<b>4.05</b>
	<b>Grand Total - All Funds</b>	<b>83,464,915</b>	<b>1,145,197</b>	<b>84,610,112</b>	<b>10,777,722</b>	<b>36,347,360</b>	<b>48,262,752</b>	<b>42.96</b>



Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Expenditures By Fund- Summary**

Percent Year 50.00  
Fiscal Year 2011  
Month December

Fund Number	Fund Title	Annual Budget	Current Month	YTD Exp	YTD Encumbr	Available Budget	Percent Utilized
100	General Fund	49,894,614	4,695,272	24,151,827	173,748	25,569,039	48.75
201	Street Lighting & Landscape Fund	544,345	67,354	238,245	-	306,100	43.77
205	Gas Tax Fund	2,685,150	10,410	329,411	-	2,355,739	12.27
210	Asset Forfeiture Fund	95,272	3,441	37,816	5,488	51,969	45.45
211	Police Safety Grants Fund	202,119	-	102,119	-	100,000	50.52
220	Federal & State Grants Fund	2,993,749	-	3,679	-	2,990,070	0.12
230	Prop. A Fund	674,950	65,578	347,120	-	327,830	51.43
231	Prop. C Fund	984,671	3,409	9,683	-	974,988	0.98
232	AB 2766 Fund	114,000	480	3,240	-	110,760	2.84
401	Capital Improvement Fund	3,698,458	542,674	724,631	-	2,973,827	19.59
403	Underground Assessment Districts	-	-	14,535	-	(14,535)	*
501	Water Fund	12,881,168	668,485	4,359,347	5,774	8,516,047	33.89
502	Stormwater Fund	538,479	19,696	92,148	49,510	396,822	26.31
503	Wastewater Fund	3,116,204	108,642	827,100	3,768	2,285,336	26.66
510	Refuse Fund	4,877,462	362,835	1,880,350	50,981	2,946,132	39.60
520	Parking Fund	3,154,636	664,879	1,264,236	-	1,890,400	40.08
521	County Parking Lots Fund	410,984	4,806	64,743	-	346,241	15.75
522	State Pier and Parking Lot Fund	940,485	45,618	172,746	-	767,739	18.37
601	Insurance Reserve Fund	4,532,040	83,495	1,855,800	-	2,676,240	40.95
605	Information Systems Fund	1,521,304	75,927	544,125	116,993	860,186	43.46
610	Fleet Management Fund	1,237,076	143,297	575,690	44,556	616,829	50.14
615	Building Maintenance & Operations Fund	1,227,969	79,978	495,328	-	732,641	40.34
710	Special Assessment Redemption Fund	977,361	-	737,024	-	240,337	75.41
801	Pension Trust Fund	136,100	15,838	69,104	-	66,996	50.77
	<b>Grand Total - All City Funds</b>	<b>97,438,596</b>	<b>7,662,115</b>	<b>38,900,047</b>	<b>450,817</b>	<b>58,087,732</b>	<b>40.39</b>

Data Date 1/10/2011

City of Manhattan Beach Month End Financial Report Expenditure Dept Fund Major Program - Summary
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Percent Year	50.00
Fiscal Year	2011
Month	December

Management Services

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
010	-CITY COUNCIL-		325,128	15,785	98,566	-	226,562	30.32
020	-CITY MANAGER-		920,512	77,122	243,648	26,945	649,919	29.40
030	-CITY TREASURER-		33,389	2,495	13,920	-	19,469	41.69
040	-CITY CLERK-		414,163	36,243	167,549	-	246,614	40.45
050	-CITY ATTORNEY-		480,352	59,061	255,148	-	225,204	53.12
	<b>General Fund</b>	<b>100</b>	<b>2,173,544</b>	<b>190,706</b>	<b>778,830</b>	<b>26,945</b>	<b>1,367,768</b>	<b>37.07</b>
<b>Department Total</b>	<b>Management Services</b>		<b><u>2,173,544</u></b>	<b><u>190,706</u></b>	<b><u>778,830</u></b>	<b><u>26,945</u></b>	<b><u>1,367,768</u></b>	<b><u>37.07</u></b>

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Expenditure Dept Fund Major Program - Summary**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**

**Finance**

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
010	-ADMINISTRATION-		1,086,062	74,355	451,000	9,700	625,362	42.42
020	-ACCOUNTING-		429,789	51,553	233,279	2,700	193,810	54.91
030	-REVENUE SERVICES-		854,090	90,272	432,297	-	421,793	50.61
040	-GENERAL SERVICES-		345,067	36,533	170,525	-	174,542	49.42
	<b>General Fund</b>	<b>100</b>	<b>2,715,008</b>	<b>252,712</b>	<b>1,287,101</b>	<b>12,400</b>	<b>1,415,507</b>	<b>47.86</b>
010	-ADMINISTRATION-		7,000	-	3,316	-	3,684	47.37
	<b>Capital Improvement Fund</b>	<b>401</b>	<b>7,000</b>	<b>-</b>	<b>3,316</b>	<b>-</b>	<b>3,684</b>	<b>47.37</b>
050	-INFORMATION SYSTEMS-		1,521,304	75,927	544,125	116,993	860,186	43.46
	<b>Information Systems Fund</b>	<b>605</b>	<b>1,521,304</b>	<b>75,927</b>	<b>544,125</b>	<b>116,993</b>	<b>860,186</b>	<b>43.46</b>
040	-GENERAL SERVICES-		214,080	11,789	94,134	-	119,946	43.97
	<b>Building Maintenance &amp; Opera</b>	<b>615</b>	<b>214,080</b>	<b>11,789</b>	<b>94,134</b>	<b>-</b>	<b>119,946</b>	<b>43.97</b>
010	-ADMINISTRATION-		136,100	15,838	69,104	-	66,996	50.77
	<b>Pension Trust Fund</b>	<b>801</b>	<b>136,100</b>	<b>15,838</b>	<b>69,104</b>	<b>-</b>	<b>66,996</b>	<b>50.77</b>
<b>Department Total</b>		<b>Finance</b>	<b>4,593,492</b>	<b>356,266</b>	<b>1,997,779</b>	<b>129,393</b>	<b>2,466,320</b>	<b>46.31</b>

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City of Manhattan Beach Month End Financial Report Expenditure Dept Fund Major Program - Summary
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Percent Year	50.00
Fiscal Year	2011
Month	December

**Human Resources**

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
010	-ADMINISTRATION-		994,475	64,744	303,648	11,500	679,327	31.69
	<b>General Fund</b>	100	994,475	64,744	303,648	11,500	679,327	31.69
020	-RISK MANAGEMENT-		4,532,040	83,495	1,855,800	-	2,676,240	40.95
	<b>Insurance Reserve Fund</b>	601	4,532,040	83,495	1,855,800	-	2,676,240	40.95
<b>Department Total</b>			<u>5,526,515</u>	<u>148,239</u>	<u>2,159,447</u>	<u>11,500</u>	<u>3,355,568</u>	<u>39.28</u>

Data Date 1/10/2011

City of Manhattan Beach Month End Financial Report Expenditure Dept Fund Major Program - Summary
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Percent Year	50.00
Fiscal Year	2011
Month	December

**Parks and Recreation**

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
010	-ADMINISTRATION-		1,724,229	87,188	835,706	15,219	873,304	49.35
020	-RECREATION SERVICES-		1,908,473	152,348	857,929	-	1,050,544	44.95
030	-CULTURAL ARTS-		575,989	40,924	322,191	-	253,798	55.94
040	-SPORTS & AQUATICS-		1,385,617	88,147	839,949	-	545,668	60.62
050	-VOLUNTEERS-		126,729	11,992	57,717	-	69,012	45.54
060	-OLDER ADULT PROGRAMS-		247,333	28,138	111,112	-	136,221	44.92
	<b>General Fund</b>	<b>100</b>	<b>5,968,370</b>	<b>408,736</b>	<b>3,024,602</b>	<b>15,219</b>	<b>2,928,548</b>	<b>50.93</b>
090	-TRANSPORTATION-		674,950	65,578	347,036	-	327,914	51.42
	<b>Prop. A Fund</b>	<b>230</b>	<b>674,950</b>	<b>65,578</b>	<b>347,036</b>	<b>-</b>	<b>327,914</b>	<b>51.42</b>
010	-ADMINISTRATION-		355,000	-	30,430	-	324,570	8.57
	<b>Capital Improvement Fund</b>	<b>401</b>	<b>355,000</b>	<b>-</b>	<b>30,430</b>	<b>-</b>	<b>324,570</b>	<b>8.57</b>
<b>Department Total</b>	<b>Parks and Recreation</b>		<u><b>6,998,320</b></u>	<u><b>474,314</b></u>	<u><b>3,402,069</b></u>	<u><b>15,219</b></u>	<u><b>3,581,032</b></u>	<u><b>48.83</b></u>

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Expenditure Dept Fund Major Program - Summary**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**

**Police**

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
010	-ADMINISTRATION-		3,872,323	328,170	1,813,934	1,425	2,056,965	46.88
020	-PATROL-		7,072,524	808,817	3,811,614	-	3,260,910	53.89
030	-INVESTIGATIONS-		2,521,852	255,907	1,246,795	-	1,275,057	49.44
040	-TECHNICAL SUPPORT SERVICES		2,262,092	201,634	1,052,131	-	1,209,961	46.51
050	-CRIME PREVENTION-		252,406	22,163	116,981	-	135,425	46.35
060	-TRAFFIC SAFETY-		1,803,440	148,637	803,982	-	999,458	44.58
070	-JAIL OPERATIONS-		514,323	52,885	249,422	-	264,901	48.50
080	-PARKING ENFORCEMENT-		1,301,751	122,994	617,351	-	684,400	47.42
090	-ANIMAL CONTROL-		287,326	31,324	146,266	-	141,060	50.91
	<b>General Fund</b>	<b>100</b>	<b>19,888,037</b>	<b>1,972,532</b>	<b>9,858,476</b>	<b>1,425</b>	<b>10,028,137</b>	<b>49.58</b>
200	-ASSET FORFEITURES-		95,272	3,441	37,816	5,488	51,969	45.45
	<b>Asset Forfeiture Fund</b>	<b>210</b>	<b>95,272</b>	<b>3,441</b>	<b>37,816</b>	<b>5,488</b>	<b>51,969</b>	<b>45.45</b>
300	-LAW ENFORCEMENT GRANTS-		202,119	-	102,119	-	100,000	50.52
	<b>Police Safety Grants Fund</b>	<b>211</b>	<b>202,119</b>	<b>-</b>	<b>102,119</b>	<b>-</b>	<b>100,000</b>	<b>50.52</b>
010	-ADMINISTRATION-		409,644	271,337	271,337	-	138,307	66.24
	<b>Capital Improvement Fund</b>	<b>401</b>	<b>409,644</b>	<b>271,337</b>	<b>271,337</b>	<b>-</b>	<b>138,307</b>	<b>66.24</b>
<b>Department Total</b>		<b>Police</b>	<b>20,595,073</b>	<b>2,247,310</b>	<b>10,269,748</b>	<b>6,912</b>	<b>10,318,413</b>	<b>49.90</b>

Data Date 1/10/2011

City of Manhattan Beach Month End Financial Report Expenditure Dept Fund Major Program - Summary
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Percent Year	50.00
Fiscal Year	2011
Month	December

Fire		Fund No	Annual	Current	YTD	YTD	Available	Percent
Prog.	Program Name	Budget	Budget	Month	Expend.	Encumb.	Budget	Utilized
No.								
010	-ADMINISTRATION-		1,813,823	120,947	720,228	17,475	1,076,120	40.67
020	-PREVENTION-		839,386	106,166	477,801	-	361,585	56.92
030	-SUPPRESSION-		3,798,394	441,639	2,188,418	-	1,609,976	57.61
040	-PARAMEDICS-		2,956,863	283,010	1,456,627	-	1,500,236	49.26
050	-SPECIAL SERVICES-		36,620	436	6,491	-	30,129	17.73
	<b>General Fund</b>	<b>100</b>	<b>9,445,086</b>	<b>952,199</b>	<b>4,849,566</b>	<b>17,475</b>	<b>4,578,045</b>	<b>51.53</b>
010	-ADMINISTRATION-		409,644	271,337	271,337	-	138,307	66.24
	<b>Capital Improvement Fund</b>	<b>401</b>	<b>409,644</b>	<b>271,337</b>	<b>271,337</b>	<b>-</b>	<b>138,307</b>	<b>66.24</b>
<b>Department Total</b>			<b>9,854,730</b>	<b>1,223,536</b>	<b>5,120,903</b>	<b>17,475</b>	<b>4,716,353</b>	<b>52.14</b>

Data Date 1/10/2011

City of Manhattan Beach Month End Financial Report Expenditure Dept Fund Major Program - Summary
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Percent Year	50.00
Fiscal Year	2011
Month	December

**Community Development**

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
010	-ADMINISTRATION-		513,885	46,011	240,560	9,183	264,141	48.60
020	-PLANNING-		755,688	73,028	346,333	27,790	381,565	49.51
030	-BUILDING-		1,463,556	154,928	702,776	-	760,780	48.02
040	-CODE ENFORCEMENT-		194,248	21,432	98,997	-	95,251	50.96
050	-TRAFFIC ENGINEERING-		208,245	22,305	105,146	-	103,099	50.49
	<b>General Fund</b>	<b>100</b>	<b>3,135,622</b>	<b>317,705</b>	<b>1,493,812</b>	<b>36,973</b>	<b>1,604,836</b>	<b>48.82</b>
<b>Department Total</b>	<b>Community Development</b>		<b>3,135,622</b>	<b>317,705</b>	<b>1,493,812</b>	<b>36,973</b>	<b>1,604,836</b>	<b>48.82</b>



Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Expenditure Dept Fund Major Program - Summary**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**

**Public Works**

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
010	-ADMINISTRATION-		1,165,624	140,047	622,540	33,344	509,740	56.27
020	-CIVIL ENGINEERING-		1,279,190	136,725	637,752	5,000	636,438	50.25
030	-STREET MAINTENANCE-		2,123,831	173,305	897,952	-	1,225,879	42.28
040	-BUILDING & GROUNDS MAINT-		877,082	83,072	368,115	13,466	495,500	43.51
050	-ELECTRICAL MAINTENANCE-		128,744	2,790	29,431	-	99,313	22.86
	<b>General Fund</b>	<b>100</b>	<b>5,574,471</b>	<b>535,940</b>	<b>2,555,791</b>	<b>51,810</b>	<b>2,966,870</b>	<b>46.78</b>
110	-STREET LIGHTING & LANDSCAP		391,793	34,698	168,484	-	223,309	43.00
120	-STREETSCAPE MAINTENANCE-		152,552	32,656	69,761	-	82,791	45.73
	<b>Street Lighting &amp; Landscape Ft</b>	<b>201</b>	<b>544,345</b>	<b>67,354</b>	<b>238,245</b>	<b>-</b>	<b>306,100</b>	<b>43.77</b>
030	-STREET MAINTENANCE-		2,685,150	10,410	329,411	-	2,355,739	12.27
	<b>Gas Tax Fund</b>	<b>205</b>	<b>2,685,150</b>	<b>10,410</b>	<b>329,411</b>	<b>-</b>	<b>2,355,739</b>	<b>12.27</b>
020	-CIVIL ENGINEERING-		1,600,000	-	-	-	1,600,000	0.00
030	-STREET MAINTENANCE-		1,393,749	-	3,679	-	1,390,070	0.26
	<b>Federal &amp; State Grants Fund</b>	<b>220</b>	<b>2,993,749</b>	<b>-</b>	<b>3,679</b>	<b>-</b>	<b>2,990,070</b>	<b>0.12</b>
090	-TRANSPORTATION-		-	-	84	-	(84)	*
	<b>Prop. A Fund</b>	<b>230</b>	<b>-</b>	<b>-</b>	<b>84</b>	<b>-</b>	<b>(84)</b>	<b>*</b>
020	-CIVIL ENGINEERING-		479,331	2,850	7,191	-	472,140	1.50
030	-STREET MAINTENANCE-		505,340	559	2,492	-	502,848	0.49
	<b>Prop. C Fund</b>	<b>231</b>	<b>984,671</b>	<b>3,409</b>	<b>9,683</b>	<b>-</b>	<b>974,988</b>	<b>0.98</b>
090	-TRANSPORTATION-		114,000	480	3,240	-	110,760	2.84
	<b>AB 2766 Fund</b>	<b>232</b>	<b>114,000</b>	<b>480</b>	<b>3,240</b>	<b>-</b>	<b>110,760</b>	<b>2.84</b>

Data Date 1/10/2011

City of Manhattan Beach  
 Month End Financial Report  
 Expenditure Dept Fund Major Program - Summary

Percent Year 50.00  
 Fiscal Year 2011  
 Month December

**Public Works**

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
010	-ADMINISTRATION-		1,128,991	-	-	-	1,128,991	0.00
020	-CIVIL ENGINEERING-		1,322,179	-	89,071	-	1,233,108	6.74
030	-STREET MAINTENANCE-		66,000	-	59,141	-	6,860	89.61
	<b>Capital Improvement Fund</b>	<b>401</b>	<b>2,517,170</b>	<b>-</b>	<b>148,212</b>	<b>-</b>	<b>2,368,958</b>	<b>5.89</b>
020	-CIVIL ENGINEERING-		-	-	14,535	-	(14,535)	*
	<b>Underground Assessment Distri</b>	<b>403</b>	<b>-</b>	<b>-</b>	<b>14,535</b>	<b>-</b>	<b>(14,535)</b>	<b>*</b>
210	-WATER ADMINISTRATION-		5,208,273	242,380	1,684,374	-	3,523,899	32.34
220	-WATER SOURCE OF SUPPLY-		5,221,449	185,849	1,548,858	-	3,672,591	29.66
230	-WATER PUMPING-		957,532	102,241	415,509	5,774	536,249	44.00
240	-WATER TREATMENT-		55,183	12,066	42,487	-	12,696	76.99
250	-WATER MAINTENANCE-		1,438,731	125,949	668,118	-	770,613	46.44
	<b>Water Fund</b>	<b>501</b>	<b>12,881,168</b>	<b>668,485</b>	<b>4,359,347</b>	<b>5,774</b>	<b>8,516,047</b>	<b>33.89</b>
310	-STORM DRAIN MAINTENANCE-		538,479	19,696	92,148	49,510	396,822	26.31
	<b>Stormwater Fund</b>	<b>502</b>	<b>538,479</b>	<b>19,696</b>	<b>92,148</b>	<b>49,510</b>	<b>396,822</b>	<b>26.31</b>
320	-SEWER MAINTENANCE-		3,116,204	108,642	827,100	3,768	2,285,336	26.66
	<b>Wastewater Fund</b>	<b>503</b>	<b>3,116,204</b>	<b>108,642</b>	<b>827,100</b>	<b>3,768</b>	<b>2,285,336</b>	<b>26.66</b>
410	-SOLID WASTE MANAGEMENT-		4,877,462	362,835	1,880,350	50,981	2,946,132	39.60
	<b>Refuse Fund</b>	<b>510</b>	<b>4,877,462</b>	<b>362,835</b>	<b>1,880,350</b>	<b>50,981</b>	<b>2,946,132</b>	<b>39.60</b>
510	-PARKING FACILITIES-		3,154,636	664,879	1,264,236	-	1,890,400	40.08
	<b>Parking Fund</b>	<b>520</b>	<b>3,154,636</b>	<b>664,879</b>	<b>1,264,236</b>	<b>-</b>	<b>1,890,400</b>	<b>40.08</b>
510	-PARKING FACILITIES-		410,984	4,806	64,743	-	346,241	15.75

Data Date 1/10/2011

**City of Manhattan Beach  
Month End Financial Report  
Expenditure Dept Fund Major Program - Summary**

Percent Year **50.00**  
Fiscal Year **2011**  
Month **December**

**Public Works**

Prog. No.	Program Name	Fund No Budget	Annual Budget	Current Month	YTD Expend.	YTD Encumb.	Available Budget	Percent Utilized
	<b>County Parking Lots Fund</b>	521	410,984	4,806	64,743	-	346,241	15.75
510	-PARKING FACILITIES-		940,485	45,618	172,746	-	767,739	18.37
	<b>State Pier and Parking Lot Fun</b>	522	940,485	45,618	172,746	-	767,739	18.37
610	-FLEET MAINTENANCE-		1,098,773	94,678	489,907	3,618	605,248	44.92
620	-FLEET REPLACEMENT-		138,302	48,619	85,782	40,938	11,582	91.63
	<b>Fleet Management Fund</b>	610	1,237,076	143,297	575,690	44,556	616,829	50.14
040	-BUILDING & GROUNDS MAINT-		1,013,889	68,189	401,194	-	612,695	39.57
	<b>Building Maintenance &amp; Opera</b>	615	1,013,889	68,189	401,194	-	612,695	39.57
020	-CIVIL ENGINEERING-		977,361	-	737,024	-	240,337	75.41
	<b>Special Assessment Redemption</b>	710	977,361	-	737,024	-	240,337	75.41
<b>Department Total</b>	<b>Public Works</b>		<u>44,561,300</u>	<u>2,704,041</u>	<u>13,677,458</u>	<u>206,399</u>	<u>30,677,442</u>	<u>31.16</u>



# Staff Report

## City of Manhattan Beach

**TO:** Members of the Finance Subcommittee

**THROUGH:** Bruce Moe, Finance Director

**FROM:** Henry Mitzner, Controller  
Eden Serina, Budget Analyst

**DATE:** January 24, 2010

**SUBJECT:** Update on the Investment Portfolio

**RECOMMENDATION:**

Staff recommends that the Finance Subcommittee accepts a status report on the City’s investment portfolio as of December 31, 2010.

**FISCAL IMPLICATION:**

There are no fiscal implications associated with the recommended action. As of December 31, 2010, the City’s investment portfolio totaled \$49.2 million (book value).

**DISCUSSION:**

Since the last update in early September 2010, the City’s investment portfolio has increased by \$2.1 million in book value. Total purchases of securities amounted to \$9 million, while \$1.0 million of securities have been called in the September 14 to December 31 timeframe. Investment in the Local Agency Investment Fund (LAIF) decreased by \$6.0 million to cover debt service payments, warrants, payroll and the purchase of new securities.

**Activity**

Purchases in the September 14<sup>th</sup> – December 31<sup>st</sup> timeframe are as follows:

Security	Coupon	Purchase Date	Maturity Date	Amount	YTM
Federal Farm Credit Bank (Callable)	1.375%	9/20/10	3/20/14	\$2,000,000	1.375%
Federal National Mortgage Association (Bullet)	2.625%	9/20/10	11/20/14	2,000,000	1.482%
Federal Farm Credit Bank (Callable)	2.450%	12/28/10	12/28/15	3,000,000	2.450%
Federal Home Loan Mortgage Corp (Bullet)	3.000%	12/22/10	7/28/14	2,000,000	1.580%
<b>Total Purchases (Sept 14 - Dec 31)</b>				<b>\$9,000,000</b>	<b>1.803%</b>

Maturities and Calls in the same timeframe are as follows:

Security	Coupon	Call Date	Maturity Date	Amount	YTM
Freddie Mac - 2.150% Coupon	2.150%	10/29/10	4/29/13	\$1,000,000	2.150%
<b>Total Called (Sept 14 - Dec 31)</b>				<b>\$1,000,000</b>	<b>2.150%</b>

Yield to Maturities in government securities have shown slight signs of improvement over the past few months, while yields in corporate securities have maintained a steady decline. The strategy has been to spread out the maturities of investments over the next sixty months (laddering), concentrating on those months without substantial cash inflow. This conservative investment approach will be maintained until a solid trend in the overall market can be established.

It is important to note that two investments, Citibank Medium Term Notes for a total of \$2.5 million, appear to be out of compliance with the City's adopted Investment Policy since they account for 5.2% of the overall portfolio of \$48,200,000 (policy limits corporate notes to no more than 5% per issuer). However, these instruments were issued under the Federal Deposit Insurance Corporation's (FDIC) "Temporary Liquidity Guarantee Program," (TLGP) in which the instruments are fully insured much like a bank deposit. As a result, we have not applied the same policy limit standard to TLGP (insured) instruments.

**City of Manhattan Beach**  
**Investment Portfolio Summary**  
*As of December 31, 2010*

<b>PORTFOLIO PROFILE</b>	<b>Dec 31, 2010</b>	<b>Nov 30, 2010</b>	<b>Oct 31, 2010</b>	<b>Sep 30, 2010</b>	<b>Aug 31, 2010</b>
Total Book Value (Excluding Trust Funds)	\$49,189,199	\$44,734,094	\$44,584,094	\$46,284,094	\$48,584,474
Increase/(Decrease) from Prior Period	4,455,105	150,000	(1,700,000)	(2,300,380)	(5,558,136)
Percentage Change	10.0%	0.3%	(3.7%)	(4.7%)	(10.27%)
Average Yield to Maturity (365 Days)	1.652%	1.585%	1.552%	1.597%	1.463%
Increase/(Decrease) from Prior Period	0.068%	0.033%	(0.045%)	0.133%	0.066%

**PORTFOLIO ALLOCATIONS**

<b>By Security</b>	<b>Value (Par)</b>	<b>Percent</b>	<b>Par YTM</b>	<b>By Year</b>	<b>Percent</b>
LAIF	\$12,200,000	25.3%	0.462%		
UBOC GMRA (collateralized savings)	-	-	-	2011	36%
Medium Term Notes	8,000,000	16.6%	2.296%	2012	12%
Federal Agencies	28,000,000	58.1%	1.973%	2013	12%
U.S. Treasuries	-	-	-	2014	21%
				2015	19%
<b>Total</b>	<b>\$48,200,000</b>	<b>100.0%</b>	<b>1.644%</b>	<b>Total</b>	<b>100.0%</b>

*LAIF YTM as of December 31, 2010*

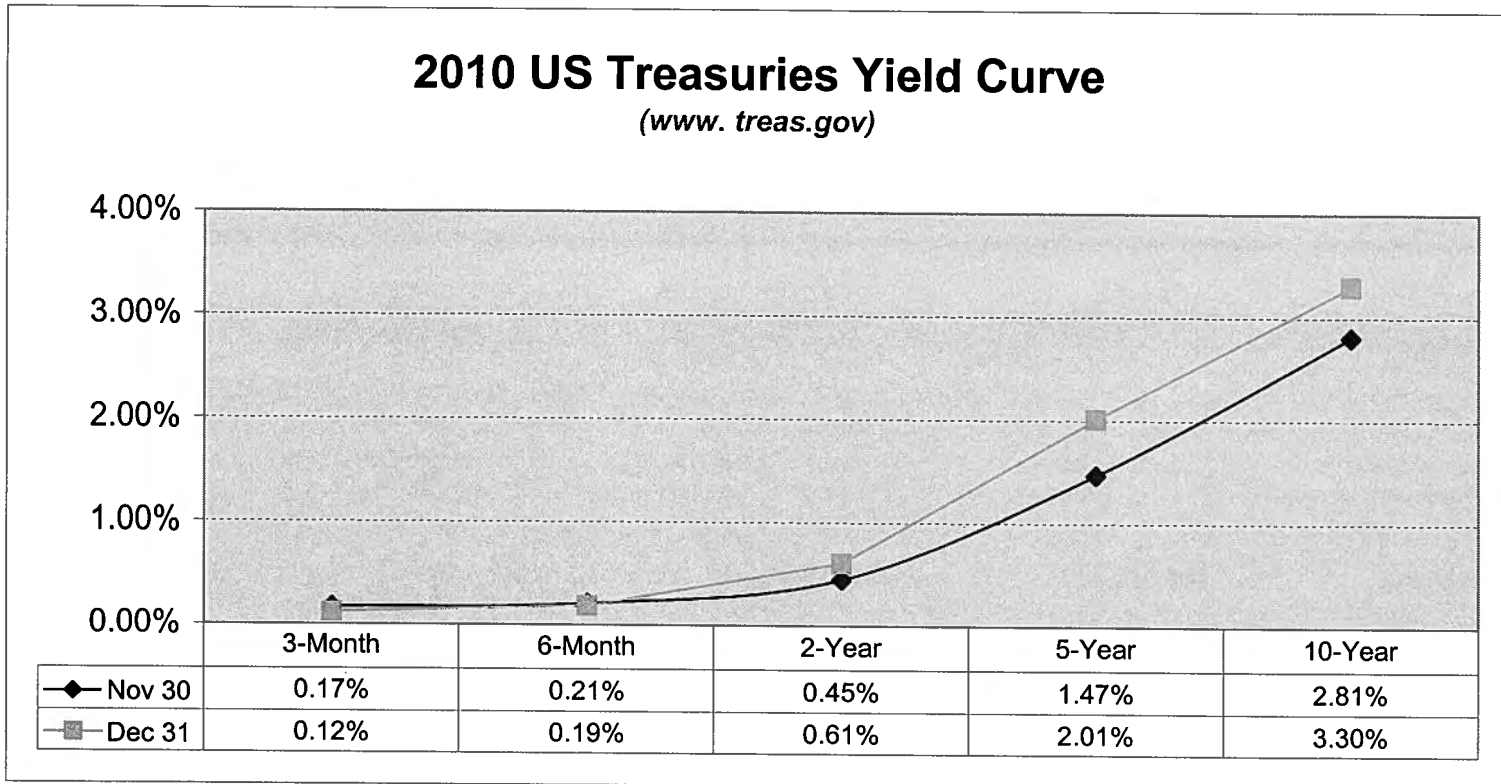
**RECENT ACTIVITY**

<b>Security</b>	<b>Date of Activity</b>	<b>Maturity Date</b>	<b>Purchase (Par)</b>	<b>Maturing/Call</b>	<b>YTM</b>
FNMA - 2% Coupon (Callable)	7/27/10	10/27/14	\$2,000,000		2.000%
FHLB - Stepup Coupon (Callable)	8/30/10	8/24/15	2,000,000		2.069%
FFCB - 1.375% Coupon (Callable)	9/20/10	3/20/14	2,000,000		1.375%
FNMA - 2.625% Coupon (Bullet)	9/20/10	11/20/14	2,000,000		1.482%
FFCB - 2.45% Coupon (Callable)	12/28/10	12/28/15	3,000,000		2.450%
FHLMC - 3% Coupon (Bullet)	12/22/10	7/28/14	2,000,000		1.580%
<b>Total Purchases</b>			<b>\$21,000,000</b>		<b>1.925%</b>
FHLB - 5.25% Coupon	6/11/10	6/11/10		\$1,000,000	5.290%
FHLMC - 4.5% Coupon	7/6/10	7/6/10		1,000,000	4.960%
Called: FNMA - 2.35% Coupon	7/13/10	1/13/14		2,000,000	2.350%
Called: FFCB - 1.47% Coupon	7/26/10	10/26/12		2,000,000	2.420%
Called: FHLB - 2.58% Coupon	8/26/10	2/26/13		1,000,000	2.580%
Called: Freddie Mac - 2.150% Coupon	10/29/10	4/29/13		1,000,000	2.150%
<b>Total Maturing/Calls</b>				<b>\$8,000,000</b>	<b>3.065%</b>

**City of Manhattan Beach**  
**Investment Portfolio Summary**  
*As of December 31, 2010*

<b>PORTFOLIO FUNDS HELD IN TRUST (a)</b>	<b>Value</b>
Police/Fire Debt Service Reserve Fund	\$1,357,219
Metlox Debt Service Reserve Fund	1,449,404
Marine Avenue	25,925
RCC Facility	264,198
Pension Bond	95,084
Water/Wastewater Debt Service Reserve Fund	341,283
UUAD Assessment Funds	1,376,569
<b>Total Funds Held in Trust</b>	<b>\$4,909,682</b>

(a) As of December 31, 2010



# City of Manhattan Beach

## Investment Policy Compliance Chart

As of December 31, 2010

Instrument	Par Value	% of Total	Dollar Compliance		Percentage Compliance		Term Compliance	
			Limit	Compliant?	Limit	Compliant?	Limit	Compliant?
Local Agency Investment Fund (LAIF)	\$12,200,000	25.3%	\$40,000,000	Yes	50.0%	Yes		
<b>Medium Term (Corporate) Notes</b>								
Wells Fargo	\$1,000,000	2.1%			5.0%	Yes	2 Years	Yes
Bank America Corporation	1,000,000	2.1%			5.0%	Yes	3 Years	Yes
General Electric	2,000,000	4.1%			5.0%	Yes	3 Years	Yes
Citibank (TLGP)	2,500,000	5.2%			5.0%	No	2 Years	Yes
General Electric (TLGP)	1,500,000	3.1%			5.0%	Yes	2 Years	Yes
<b>Subtotal Medium Term Notes</b>	<b>\$8,000,000</b>	<b>16.6%</b>			<b>30.0%</b>	<b>Yes</b>		
<b>Federal Agencies</b>								
Federal Home Loan Bank (FHLB)	\$10,000,000	20.7%			33.3%	Yes	5 Years	Yes
Federal Farm Credit (FFCR)	8,000,000	16.6%			33.3%	Yes	5 Years	Yes
Fannie Mae (FNMA)	4,000,000	8.3%			33.3%	Yes	5 Years	Yes
Freddie Mac (FHLMC)	6,000,000	12.4%			33.3%	Yes	5 Years	Yes
<b>Subtotal Federal Agencies</b>	<b>\$28,000,000</b>	<b>58.1%</b>			<b>60.0%</b>	<b>Yes</b>	<b>5 Years</b>	<b>Yes</b>
<b>Total Portfolio</b>	<b>\$48,200,000</b>	<b>100.0%</b>						

Temporary Policy Suspension on LAIF to allow over 50% of the portfolio to be invested in LAIF - approved by the Finance Subcommittee July 2010.



**CITY OF MANHATTAN BEACH**  
**Portfolio Maturity Structure**  
*January 2011 through December 2015*

**HELD TO MATURITY**  
**Rolling 60 Months**

Mth	Mat.	YTM	Inv	Call	Amt	Mth	Mat.	YTM	Inv	Call	Amt	Mth	Mat.	YTM	Inv	Call	Amt	Mth	Mat.	YTM	Inv	Call	Amt						
Jan 11						Jan 12						Jan 13						Jan 14						Jan 15					
Feb 11						Feb 12						Feb 13	2/14/13	2.40%	FHLB	2/14/11	\$1.0M	Feb 14						Feb 15					
Mar 11	3/11/11	1.45%	TLGP	nc	\$1.5M	Mar 12						Mar 13						Mar 14	3/20/14	1.38%	FFCB	12/20/10	\$2.0M	Mar 15	3/4/15	2.18%	FFCB	nc	\$2.0M
	3/30/11	1.51%	TLGP	nc	\$1.5M																								
Apr 11						Apr 12						Apr 13						Apr 14						Apr 15					
May 11						May 12						May 13						May 14						May 15					
Jun 11						Jun 12						Jun 13						Jun 14						Jun 15					
Jul 11						Jul 12						Jul 13	7/8/13	1.88%	FFCB	nc	\$1.0M	Jul 14	7/28/14	1.58%	FHLMC	nc	\$2.0M	Jul 15	7/14/15	2.50%	FHLMC	1/14/11	\$2.0M
Aug 11						Aug 12						Aug 13						Aug 14						Aug 15	8/24/15	2.07%	FHLB-stp	8/24/11	\$2.0M
Sep 11	9/22/11	0.79%	TLGP	nc	\$1.0M	Sep 12	9/15/12	4.15%	MTN	nc	\$1.0M	Sep 13						Sep 14						Sep 15					
Oct 11						Oct 12	10/19/12	3.95%	MTN	nc	\$2.0M	Oct 13	10/18/13	2.03%	FHLB	nc	\$2.0M	Oct 14	10/27/14	2.00%	FNMA	1/27/11	\$2.0M	Oct 15					
Nov 11						Nov 12	11/15/12	1.84%	FHLB	nc	\$1.0M	Nov 13	11/20/13	2.10%	FHLB	5/20/11	\$2.0M	Nov 14	11/13/14	2.33%	FHLMC	nc	\$2.0M	Nov 15					
																			11/20/14	1.48%	FNMA	nc	\$2.0M						
Dec 11	12/9/11	0.92%	TLGP	nc	\$1.0M	Dec 12	12/21/12	1.25%	FHLB	6/21/11	\$2.0M	Dec 13						Dec 14						Dec 15	12/28/15	2.45%	FFCB	12/28/11	\$3.0M
<b>Total By Year (excl LAIF)</b>					<b>\$5.0M</b>						<b>\$6.0M</b>						<b>\$6.0M</b>						<b>\$10.0M</b>						<b>\$9.0M</b>
<b>% of Total Securities (excl LAIF)</b>					<b>14%</b>						<b>17%</b>						<b>17%</b>						<b>28%</b>						<b>25%</b>
<b>% of Total Investments (incl LAIF)</b>					<b>36%</b>						<b>12%</b>						<b>12%</b>						<b>21%</b>						<b>19%</b>

Total Securities	75%	\$36.0M
LAIF	25%	\$12.2M
<b>Total Investments</b>	<b>100%</b>	<b>\$48.2M</b>

*Shaded rows indicate months with significant cash inflows.*

**CITY OF MANHATTAN BEACH**  
**December 31, 2010**

<b><u>Investments</u></b>	<b>Book Value</b>
LAIF	12,200,000.00
Medium Term Notes	8,192,380.00
Federal Agency Issues-Coupon	28,796,818.84
Treasury Securities	-
<b>Subtotal Investments</b>	<b><u>49,189,198.84</u></b>
<b><u>Demand Deposit/Petty Cash</u></b>	
Cash in Bank	205,217.15
Petty Cash	2,179.70
<b>Total Demand Deposit</b>	<b><u>207,396.85</u></b>
<b><u>Subtotal City Cash &amp; Investments</u></b>	<b><u>49,396,595.69</u></b>
<b><u>Bond Funds Held in Trust</u></b>	
Police/Fire (Bond)	1,357,218.76
Metlox	1,449,404.38
Marine	25,925.37
RCC Facility	264,197.72
Pension Bond	95,083.73
Water/Wastewater	341,283.37
Utility Assessment Dist	1,376,568.61
<b>Subtotal Bonds Held in Trust</b>	<b><u>4,909,681.94</u></b>
<b>Treasurer's Balance</b>	<b><u>54,306,277.63</u></b>

**CITY OF MANHATTAN BEACH**  
**Portfolio Management**  
**Portfolio Summary**  
**December 1, 2010 through December 31, 2010**

<b>Investments</b>	<b>Par Value</b>	<b>Market Value</b>	<b>Book Value</b>	<b>% of Portfolio</b>	<b>Term</b>	<b>Days to Maturity</b>	<b>YTM 360 Equiv.</b>	<b>YTM 365 Equiv.</b>
LAIF	12,200,000.00	12,200,000.00	12,200,000.00	24.80	1	1	0.456	0.462
Medium Term Notes	8,000,000.00	8,222,415.00	8,192,380.00	16.65	1,047	352	2.264	2.296
Federal Agency Issues - Coupon	28,000,000.00	28,894,760.00	28,796,818.84	58.54	1,478	1,307	1.946	1.973
<b>Investments</b>	<b>48,200,000.00</b>	<b>49,317,175.00</b>	<b>49,189,198.84</b>	<b>100.00%</b>	<b>1,040</b>	<b>824</b>	<b>1.630</b>	<b>1.652</b>
<b>Cash and Accrued Interest</b>								
Passbook/Checking (not included in yield calculations)	205,217.15	205,217.15	205,217.15		1	1	0.000	0.000
Accrued Interest at Purchase		24,000.00	24,000.00					
Subtotal		229,217.15	229,217.15					
<b>Total Cash and Investments</b>	<b>48,405,217.15</b>	<b>49,546,392.15</b>	<b>49,418,415.99</b>		<b>1,040</b>	<b>824</b>	<b>1.630</b>	<b>1.652</b>

**Total Earnings**                      **December 31 Month Ending**  
Current Year                              78,681.61

  
\_\_\_\_\_  
BRUCE A. MOE, FINANCE DIRECTOR

Reporting period 12/01/2010-12/31/2010

Run Date: 01/19/2011 - 11:23

No fiscal year history available

Portfolio CITY  
CP  
PM (PRF\_PM1) SymRept 6.42  
Report Ver. 5.00

**CITY OF MANHATTAN BEACH**  
**Portfolio Management**  
**Portfolio Details - Investments**  
**December 31, 2010**

CUSIP	Investment #	Issuer	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	Moody's	YTM 365	Days to Maturity	Maturity Date
<b>LAIF</b>											
SYS3000	3000	Local Agency Invest. Fund	07/01/2000	12,200,000.00	12,200,000.00	12,200,000.00	0.462		0.462	1	
<b>Subtotal and Average</b>				<b>12,200,000.00</b>	<b>12,200,000.00</b>	<b>12,200,000.00</b>			<b>0.462</b>	<b>1</b>	
<b>Money Market Fund</b>											
SYSGMRA39907	GMRA39907	Union Bank of California	10/09/2008	0.00	0.00	0.00	0.350		0.350	1	
<b>Subtotal and Average</b>				<b>0.00</b>	<b>0.00</b>	<b>0.00</b>			<b>0.000</b>	<b>0</b>	
<b>Medium Term Notes</b>											
060505AR5	MTN0057	BANKAMERICA CORP	03/11/2008	1,000,000.00	1,044,140.00	1,029,540.00	4.875	A2	4.150	623	09/15/2012
17314JAA1	MTN0060	CITIBANK NA	04/02/2009	1,500,000.00	1,505,130.00	1,503,375.00	1.625	AAA	1.510	88	03/30/2011
17314JAP8	MTN0061	CITIBANK NA	03/30/2010	1,000,000.00	1,007,150.00	1,006,740.00	1.250	AAA	0.790	264	09/22/2011
36962G3K8	MTN0058	GENERAL ELECTRIC CAPITAL	03/20/2008	2,000,000.00	2,137,560.00	2,107,900.00	5.250	AA2	3.950	657	10/19/2012
36967HAL1	MTN0059	GEN ELEC CAP CRP	04/02/2009	1,500,000.00	1,504,395.00	1,510,005.00	1.800	AAA	1.450	69	03/11/2011
949744AA4	MTN0062	WELLS FARGO & CO SRNT	03/30/2010	1,000,000.00	1,024,040.00	1,034,820.00	3.000		0.920	342	12/09/2011
<b>Subtotal and Average</b>				<b>8,000,000.00</b>	<b>8,222,415.00</b>	<b>8,192,380.00</b>			<b>2.296</b>	<b>352</b>	
<b>Federal Agency Issues - Coupon</b>											
31331Y2Q2	FAC0185	FED FARM CR BK	03/26/2010	1,000,000.00	1,082,000.00	1,075,090.00	4.250	AAA	1.880	919	07/08/2013
31331SNP4	FAC0194	FED FARM CR BK	07/14/2010	2,000,000.00	2,228,560.00	2,202,472.62	4.550	AAA	2.177	1,523	03/04/2015
31331JH71	FAC0196	FED FARM CR BK	09/20/2010	2,000,000.00	1,995,840.00	2,000,000.00	1.375	AAA	1.375	1,174	03/20/2014
31331J6P3	FAC0199	FED FARM CR BK	12/28/2010	3,000,000.00	2,992,740.00	3,000,000.00	2.450	AAA	2.450	1,822	12/28/2015
3133XUDM2	FAC0177	Federal Home Loan Bank	08/14/2009	1,000,000.00	1,002,150.00	1,000,000.00	2.400	AAA	2.400	775	02/14/2013
3133XURR6	FAC0181	Federal Home Loan Bank	09/18/2009	1,000,000.00	1,024,090.00	1,003,360.00	1.950	AAA	1.840	684	11/15/2012
3133XSAE8	FAC0186	Federal Home Loan Bank	03/26/2010	2,000,000.00	2,135,620.00	2,109,020.00	3.625	AAA	2.030	1,021	10/18/2013
3133XYFNO	FAC0189	Federal Home Loan Bank	05/20/2010	2,000,000.00	2,011,820.00	2,000,000.00	2.100	AAA	2.100	1,054	11/20/2013
3133XYS30	FAC0190	Federal Home Loan Bank	06/21/2010	2,000,000.00	2,009,000.00	2,000,000.00	1.250	AAA	1.250	720	12/21/2012
313370TG3	FAC0195	Federal Home Loan Bank	08/30/2010	2,000,000.00	1,985,720.00	2,000,000.00	1.000	AAA	2.069	1,696	08/24/2015
3134G1KQ6	FAC0192	Federal Home Loan Mortgage	07/14/2010	2,000,000.00	2,001,220.00	2,005,000.00	2.550	AAA	2.497	1,655	07/14/2015
3137EACD9	FAC0198	Federal Home Loan Mortgage	12/22/2010	2,000,000.00	2,105,360.00	2,109,817.90	3.000	AAA	1.576	1,304	07/28/2014
3128X3L76	FAC0191	Freddie Mac	06/04/2010	2,000,000.00	2,241,980.00	2,199,079.65	5.000	AAA	2.325	1,412	11/13/2014
3136FMY65	FAC0193	Fannie Mae	07/27/2010	2,000,000.00	2,002,620.00	2,000,000.00	2.000	AAA	2.000	1,395	10/27/2014
31398AZV7	FAC0197	Fannie Mae	09/20/2010	2,000,000.00	2,076,040.00	2,092,978.67	2.625	AAA	1.482	1,419	11/20/2014
<b>Subtotal and Average</b>				<b>28,000,000.00</b>	<b>28,894,760.00</b>	<b>28,796,818.84</b>			<b>1.973</b>	<b>1,307</b>	

**CITY OF MANHATTAN BEACH**  
**Portfolio Management**  
**Portfolio Details - Investments**  
**December 31, 2010**

CUSIP	Investment #	Issuer	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	Moody's	YTM 365	Days to Maturity	Maturity Date
<b>Total and Average</b>				48,200,000.00	49,317,175.00	49,189,198.84			1.652	824	

**CITY OF MANHATTAN BEACH**  
**Portfolio Management**  
**Portfolio Details - Cash**  
**December 31, 2010**

CUSIP	Investment #	Issuer	Purchase Date	Par Value	Market Value	Book Value	Stated Rate	Moody's	YTM 365	Days to Maturity
<b>Money Market Fund</b>										
SYS39903-39902	39901	UNION BANK	06/01/2003	205,217.15	205,217.15	205,217.15			0.000	1
<b>Subtotal and Average</b>			Accrued Interest at Purchase		24,000.00	24,000.00				1
			Subtotal		229,217.15	229,217.15				
<b>Total Cash and Investments</b>				<b>48,405,217.15</b>	<b>49,546,392.15</b>	<b>49,418,415.99</b>			<b>1.652</b>	<b>824</b>

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Agenda Item #: \_\_\_\_\_



# Staff Report

## City of Manhattan Beach

**TO:** Finance Subcommittee

**THROUGH:** Bruce Moe, Director of Finance

*[Handwritten checkmark]*

**FROM:** Steve S. Charelian, Revenue Services Manager

*[Handwritten initials]*

**DATE:** January 24, 2011

**SUBJECT:** FY 2010/2011 Monthly Schedule of TOT and Lease Payments and Miscellaneous Accounts Receivables.

**RECOMMENDATION:**

Staff recommends that the Finance Subcommittee Receive and File this Report.

**FISCAL IMPLICATION:**

There are no fiscal implications associated with the recommended action.

**DISCUSSION:**

Each month the Revenue Division invoices and collects for miscellaneous accounts receivable which includes the schedule of Transient Occupancy Tax (TOT), lease revenue and other payments.

**Attachments:**

1. FY 2010/2011 Monthly Schedule of TOT, Lease and Miscellaneous payments
2. Miscellaneous Accounts Receivables Aging Statistical Report

MONTHLY REVENUES			July 2010	Aug 2010	Sept 2010	Oct 2010	Nov 2010	Dec 2010	Jan 2011	Feb 2011	Mar 2011	Apr 2011	May 2011	June 2011	TOTALS
	Due Date	Acct #													
<b>HOTEL BED TAX:</b>															
The Belamar	M	20TH	100-3203	7/19/2010	8/17/2010	9/21/2010	10/21/2010	11/23/2010	12/20/2010	1/20/2011					
Comfort Inn	M	20TH	100-3203	7/20/2010	8/20/2010	9/22/2010	10/20/2010	11/19/2010	12/17/2010						
Man Village Inn	M	20TH	100-3203	7/15/2010	8/13/2010	9/14/2010	10/14/2010	11/16/2010	12/14/2010	1/12/2011					
Hawthorn Suites	M	20TH	100-3203	7/19/2010	8/18/2010	9/20/2010	10/19/2010	11/22/2010	1/20/2011	1/20/2011					
Hi-View Motel	M	20TH	100-3203	7/20/2010	8/20/2010	9/20/2010	10/20/2010	11/22/2010	12/20/2010						
Holiday Inn Express	M	20TH	100-3203	7/20/2010	8/20/2010	9/22/2010	10/20/2010	11/19/2010	12/17/2010						
Man Bch Motel	M	20TH	100-3203	7/21/2010	9/20/2010	12/30/2010	10/21/2010	12/30/2010	1/11/2011	1/20/2011					
Marriott	M	20TH	100-3203	7/20/2010	8/20/2010	9/20/2010	10/20/2010	11/19/2010	12/16/2010	1/20/2011					
Residence Inn	M	20TH	100-3203	7/16/2010	8/13/2010	9/27/2010	10/15/2010	11/23/2010	12/23/2010						
Sea Horse Inn	M	20TH	100-3203	7/8/2010	8/3/2010	9/8/2010	10/5/2010	11/16/2010	12/8/2010	1/11/2011					
Sea View Inn	M	20TH	100-3203	7/20/2010	8/20/2010	9/17/2010	10/15/2010	11/19/2010	12/20/2010	1/20/2011					
Shade	M	20TH	100-3203	7/16/2010	8/20/2010	9/20/2010	10/20/2010	11/19/2010	12/20/2010	1/20/2011					
<b>Sub Total</b>				290908.35	322846.14	313322.51	253001.83	265598.50	226713.51	0.00	0.00	0.00	0.00	0.00	1,672,390.84
<b>RALEIGH STUDIOS:</b>															
				+5%	+2%	+10.5%	+4.7%	-5.9%	+7.5%						
Raleigh Studios-Fire	M	20TH	100-3715	7/19/2010	8/20/2010	9/16/2010	10/15/2010	11/18/2010	12/16/2010						
Raleigh Studios %	M	20TH	100-3204	7/19/2010	8/20/2010	9/16/2010	10/15/2010	11/18/2010	12/23/2010						
Raleigh Studios-Fire	M	1ST	100-3718	7/2/2010	8/3/2010	9/2/2010	10/1/2010	11/2/2010	12/6/2010	1/4/2011					
Raleigh Annual Fire Fee	A	JANUARY													0.00
<b>LEASES:</b>															
1334 Partners-Rent	M	10TH	100-3513	20916.61	20916.61	20916.61	21962.44	20916.61	20916.61	20,916.61					147,462.10
1334 Partners-Parking	M	10TH	100-3531	2507.49	2507.49	2507.49	2632.86	2507.49	2507.49	2,507.49					17,677.80
County Library Parking	M	15TH	100-3534	522.39	522.39	522.39	522.39	522.39	522.39	522.39					3,656.73
Sprint	M	30TH	100-3517	3412.13	3412.13	3412.13	3412.13	3412.13	3412.13	3582.74					24,055.52
AT & T	M	1ST	100-3517	3274.31	3274.31	3274.31	3274.31	3274.31	3274.31	3274.31					22,920.17
Pay N Play Racquetball	M	1ST	100-3511	280.00	280.00	280.00	280.00	280.00	280.00	280.00					1,960.00
Marriott-Min	M	20TH	100-3516	33333.33	33333.33	33333.33	33333.33	33333.33	33333.33	33333.33					233,333.31
RocknOyster (pier)	M	15TH	522-3511	600.00	652.80	648.80	600.00	660.00	600.00						3,761.60
Metlox	M	1ST	100-3511	20083.33	20083.33	20083.33	20083.33	20083.33	20083.33	20083.33					140,583.31
United States PO	M	1ST	100-3533	1765.17	1765.17	1765.17	1765.17	1765.17	1765.17	1765.17					12,356.19
Village Mall Parking	M	25TH	100-3532	12733.62	12733.62	12733.62	978.62	978.62	978.61	12733.62					53,870.33
Marriott - %	Q	31ST	100-3515	150597.00			157577.00								308,174.00
Marriott Golf Course	Q	31ST	100-3512	2414.00			3791.00								6,205.00
<b>FRANCHISES:</b>															
Verizon	Q		100-3202		76768.24			83072.67							159,840.91
Verizon PEG	A		100-3203												
Air Products	A	AUG.	100-3202	3877.36											3,877.36
Time Warner (PEG)	Q		100-3202	13130.00			12599.00								25,729.00
Time Warner (Basic)	Q		100-3202	65649.00			62993.00								128,642.00
Van Lingen Towing	M	10TH	100-3713	8568.00	8442.00	7938.00	6048.00	7308.00	7056.00	6804.00					52,164.00
So Cal Edison	A	APRIL	100-3202												-
So Cal Gas	A	APRIL	100-3202												-
Bell Cab	A	AUGUST	100-3201	25260.00											-
United Independent Cab	A	AUGUST	100-3202	33680.00											33,680.00
SB Yellow Cab	A	AUGUST	100-3202	54730.00											54,730.00
Global Paratransit	A	AUGUST	100-3202	25260.00											25,260.00
Plains West Coast Terminals	A	APRIL	100-3202												-



MONTHLY REVENUES			July 2010	Aug 2010	Sept 2010	Oct 2010	Nov 2010	Dec 2010	Jan 2011	Feb 2011	Mar 2011	Apr 2011	May 2011	June 2011	TOTALS
	Due Date	Acct #													
<b>MISC. PAYMENTS</b>															
Waste Mgmt-Recycle	A	JUNE	510-3747												
Mrs. June Mikrut	A	AUG. \$25	503-3738												-
Median-Hermosa Bch	A	SEPT.	205-3735												-
Median-Redondo Bch	A	SEPT.	205-3735												-
Panchos-Pkg Spaces	M	1ST	520-3995	495.00	495.00	975.00	975.00	975.00	975.00	975.00					5,865.00
Signals-Target	A	AUG.	100-3736												-
Sushi Fusion 270 Sq. Ft	A	APRIL	100-3734												-
Summers 44 Sq. Ft.	A	APRIL	100-3734												-
Uncle Bills 195 Sq. Ft	A	APRIL	100-3734												
Ocean View 270 Sq. Ft	M	1ST	100-3734	270.00	270.00	270.00	270.00	270.00	270.00	270.00	270.00				2,160.00
Storage Shade 9/09	M	15TH	100-3511	635.00	635.00	635.00	635.00	635.00	635.00	635.00					4,445.00
Triolgy Day Spa	M	15TH	100-3511	619.50	619.50	619.50	619.50	681.45	681.45	619.50					4,460.40
Shade	M	15TH	100-3511	746.96	746.96	746.96	746.96	746.96	746.96	746.96					5,228.72
Ohana Valet Downtown	Q	10TH	520-3995			1492.50									1,492.50
Inmate Communications	M	NET 60	100-21604	182.48	125.31	133.24	221.10								662.13
A - Annual															
Q - Quarterly															
M - Monthly															

City of Manhattan Beach								
Accounts Receivable - Aging Statistics								
Miscellaneous AR								1/2011
	Dollars							
	Total AR	0-30	30-60	60-90	90-120	>120		
July	165,998.00	15,020.75	81,428.60	1,425.24	4,320.68	63,802.73		
August	224,845.38	152,763.53	9,618.20	3,301.00	1,425.24	57,737.41		
September	221,579.12	109,945.12	42,116.12	7,544.23	3,301.00	58,672.65		
October	300,577.04	160,222.95	33,950.49	37,235.72	7,354.23	61,823.65		
November	280,973.87	96,003.84	54,742.17	26,510.26	35,189.72	68,537.88		
December	206,689.12	101,386.35	14,083.43	2,285.00	14,133.26	74,801.08 **		
January	0.00	0.00	0.00	0.00	0.00	0.00		
February								
March								
April								
May								
June								
<b>Average</b>	<b>200,094.65</b>	<b>90,763.22</b>	<b>33,705.57</b>	<b>11,185.92</b>	<b>9,389.16</b>	<b>55,053.63</b>		
	<i>**One Invoices accounts for \$18,700 of &gt;120 is the old (Gelmini Case) - Contractor Bankruptcy</i>							
	<i>**Approx. \$39,000 of &gt; 120 days are for DUI cost recovery - pending collections</i>							
	Percentages							
	Total AR	0-30	30-60	60-90	90-120	>120		
July	100.00%	9.05%	49.05%	0.86%	2.60%	38.44%		
August	100.00%	67.94%	4.28%	1.47%	0.63%	25.68%		
September	100.00%	49.62%	19.01%	3.40%	1.49%	26.48%		
October	100.00%	53.31%	11.30%	12.39%	2.45%	20.57%		
November	100.00%	34.17%	19.48%	9.44%	12.52%	24.39%		
December	100.00%	49.05%	6.81%	1.11%	6.84%	36.19%		
January								
February								
March								
April								
May								
June								
<b>Average</b>	<b>100.00%</b>	<b>43.86%</b>	<b>18.32%</b>	<b>4.78%</b>	<b>4.42%</b>	<b>28.62%</b>		
						<b>100%</b>		



# Staff Report

## City of Manhattan Beach

**TO:** Finance Subcommittee

**THROUGH:** Dave Carmany, City Manager

**FROM:** Jim Arndt, Public Works Director  
Anna Luke, Senior Management Analyst

**DATE:** January 24, 2011

**SUBJECT:** Consideration of Final Contracts for the City's Refuse Exclusive Franchise

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**RECOMMENDATION:**

Staff recommends that the Finance Subcommittee review the attached (3) final draft refuse franchise agreements and provide a recommendation for award of contract for the February 15, 2011 City Council meeting.

Staff recommends Crown Disposal for the provision of city hauling services and to include Optional Services. The seven year contract has an estimated first year cost of \$3,150,000. Staff recommends including all Optional Services, as those additions best meet the City's major goals of solid waste diversion.

**FISCAL IMPLICATION:**

The City's current annual revenue is \$3,152,000. The recommended hauler, Crown Disposal, projects a first-year revenue of \$3,150,000. Crown's \$3,150,000 revenue includes all base services plus Optional Services, which provide a 70% hauler diversion. Therefore, the hauler diversion would increase from the current 38% to 70% with virtually no change in annual revenue.

*Proposition 218 Vote Process & City Recovery Costs*

If the new, proposed user rates exceed the amount of the existing user rates, a "Proposition 218 vote" is required, which allows residents the opportunity to reject the proposed rates for the next solid waste contract. Because the City Council contract award date has been moved to February 15, 2011, Council consideration of the 218 process will occur on May 3, 2011. Therefore, the earliest start date the awarded hauler may begin is June 1, 2011, and the city will need to utilize at least one (1) month of the optional Waste Management extension at \$60,000 per month.

The "City Recovery Costs" (formerly the "Administrative Fee") cover the costs of City Staff in the administration of solid waste activities. The City Recovery Costs are added separately from the hauler's rates and will be included in final user rates covered in the Proposition 218 voting process.

**BACKGROUND:**

The City's current solid waste contract with Waste Management will expire on April 20, 2011, with an optional six-month extension to expire on October 31, 2011. In October 2008 City Council directed the City's Solid Waste and Recycling Subcommittee of the Environmental Task Force (ETF) to provide recommendations for the city's next contract. The Environmental Task Force provided recommendations for improvements to reduce landfill waste (increase diversion) at the May 5, 2009 meeting, and at its July 7, 2009 meeting, City Council hired HF&H Consultants, LLC to assist the city with the new refuse contract process. The Council initially renegotiated with the city's current hauler, Waste Management, but ultimately declined the negotiation package and directed Staff to pursue the bid process at its April 6, 2010 meeting. On September 7, 2010, the City Council approved the Solid Waste Request for Proposal (RFP) and draft Franchise Agreement for public release. The Request for Proposal package was released on September 9, 2010.

On October 29, 2010, the city received five (5) responses: four (4) complete bid packages and one (1) no-bid letter from Toter Inc., a refuse cart company. The four (4) proposers were (in alphabetical order) Athens Services, Crown Disposal, Waste Management, and Waste Resources. Waste Resources' rates were significantly higher than the other proposers, and per Finance Subcommittee direction at the December 7, 2010 Subcommittee meeting, were eliminated from further consideration. The Finance Subcommittee also reviewed the three remaining proposals at their December 7, 2010 meeting and participated in the hauler interviews on December 13, 2010. At the conclusion of the hauler interviews, the Finance Subcommittee directed Staff to request a "Best and Final" offer and to pursue final draft contract development with all three (3) remaining proposers: Athens Services, Crown Disposal and Waste Management, with the intent to review final contract information at the January 24, 2011 Finance Subcommittee Meeting.

**DISCUSSION:**

As directed by the Finance Subcommittee at the conclusion of their December 13, 2010 meeting, HF&H Consultants, LLC worked with all haulers in finalizing the "Best and Final" proposals and contracts. The final contracts have been signed by its respective hauler as a commitment to administer the agreement created (see Attachments 4, 5 and 6). HF&H Consultants also created a summary of the three "Best and Final" proposals (see Attachment 2) for review and discussion at the January 24, 2011 Finance Subcommittee meeting. An overview of the attached summary will be presented at the Subcommittee meeting. *Note that the rates attached and those discussed at the Finance Subcommittee meeting are contractor rates only and do not contain the City Recovery Costs.*

Key to a recommendation of selecting a hauler is the hauler's ability to excel in diverting waste from the landfill. To reach the highest diversion of materials from the landfill as possible, the type of service requires implementing *all* the Optional Services at the lowest possible price. The Optional Services are part of the waste reduction services recommended by the Environmental Task Force and accepted by the City Council.

The Optional Service programs were either recommended by the city's Environmental Task Force and/or has been heavily requested by residents. All Optional Service programs benefit the city in its efforts to reduce its landfill tonnage therefore increasing its diversion. All Optional Services are included in the Staff recommended service level of the new contract. Tables provided in

Attachment 1 list both the residential and commercial rates with and without the Optional Services in order that cost of services may be compared.

*Basis for Recommending Crown Disposal*

*Diversion*

In evaluation of the proposals and the haulers respective strengths, Staff first considered the type of service provided that matched stated City goals. One of the most significant goals is that of diversion of waste from landfills and the reuse of disposed materials. It is Staff's recommendation that the service level selected include all Optional Services (household hazardous waste, increased mix bin processing, and food waste) to maximize diversion. With inclusion of Optional Services, the City could realize an increase in diversion from the existing 38% level to 70% as provided by the Crown Disposal proposal.

*Cost*

The recommended service level includes all Optional Services. Table 5 in Attachment 1 shows Athens' seven year rate revenue as \$23,400,000 and Crown at \$23,800,000 (1.7% less than Crown). Table 6 in Attachment 1 compares the hauler diversion rates. Crown's greater diversion rate of 70% compared to Athens' rate of 55% provides exceptional value in meeting one of the City's primary goals for this contract which is to reduce landfill tonnage by increasing diversion. The high diversion rate and low cost is a primary basis for the Staff recommendation.

*Hauler Analysis*

The additional 15% increased guaranteed diversion (from 55% to 70%) provides exceptional value in meeting the City's diversion goal and Staff recommends Crown Disposal to provide the service.

If service type does not include Optional Services, Staff would recommend Athens, although Crown Disposal's cost proposal would still guarantee a higher diversion rate (65% to 50%) at a 3.6% increased cost over Athens and still merit consideration.

HF&H did extensive research on the haulers ability to provide service, including corporate franchise ability, customer satisfaction, business plan to accomplish the work, environmental violations, and past/outstanding lawsuits involving the company. It is HF&H Consultants' opinion that all three haulers can provide the services required of the Manhattan Beach contract.

*Additional Considerations*

Last, it is difficult to quantify and prioritize very important aspects of the next hauler including satisfaction of service of the hauler and ease of transition from current hauler to a new hauler. In the review of hauler's customer satisfaction of their current/previous customers, HF&H found Athens and Crown to be rated equally (4.2 of possible score of 5), and Waste Management rated a 4.0.

Essentially, it is statistically equivalent and underscores the notion that most customers develop an allegiance to whoever their hauler is. Staff believes that once in place, Crown will provide a

level of service to the resident comparable to the current hauler.

With regard to ease of transition, Staff believes that the most significant public impact will be that of the residential user selecting a cart size and returning/receiving carts. This will occur irrespective of the hauler selected and likely diminish after cart swap out, and as new drivers become familiar with routes. Customer service impacts will be minimized with efficient, professional service provided by both the existing and new haulers.

Greater transition impacts will be felt by City Staff because of the entry of new billing information and the establishing of relationships necessary for the administration of the new contract. While undoubtedly, it would be easier for Staff to continue with an incumbent hauler because of the positive professional relationship, it should not be considered significant and certainly one that would not outweigh the public benefit of the high diversion and cost benefits of the new service.

*Optional Services*

An explanation of each of the Optional Services follows:

OPTIONAL SERVICES MATRIX

SECTOR	Door-to-Door HHW Pick-up	City-Wide Commercial and Multi-Family Bin Mixed Waste Processing	Residential Food Waste Collection*	Commercial Food Waste Collection*
Residential	YES		YES	
Commercial		YES		YES

\*Request for Proposal package listed Food Waste program as a 90 day pilot.

Athens is offering a complete Residential and Commercial food waste recycling program at an additional cost. Crown is offering the complete Residential and Commercial food waste recycling program as part of its basic cost and service.

Waste Management does not have the infrastructure to implement a program at the start of contract, but will comply with the Request for Proposal requirements to perform the 90 day food waste pilot program.

*Door-to-Door Household Hazardous Waste (HHW) Pick Up*

The Door-to-Door HHW Program is a convenient appointment based, unlimited at-home pick-up of household hazardous chemicals, universal waste and electronic waste for all Manhattan Beach single and multi-family residents. The residents may dispose of an unlimited amount of HHW from their garages, cabinets, and storage units through the appointment-based program. On the appointment day, residents would place their HHW in the designated area for their residence (area to be determined at time appointment is made, though *not at the curb*).

This program stems from consistent requests to the Public Works Department for a more convenient, weekday-friendly way to dispose of HHW. Residents have shared over and over again that the hassle of loading hazardous materials into their personal vehicles and driving them to another city only on weekends is not helpful. Also, residents have shared that they would

participate in disposing of HHW properly if there was a more convenient program available.

Examples of Household Hazardous Wastes and what makes them Hazardous:

- Batteries--Includes all batteries, AAA, AA, C, D, button cell, 9-volt, and all others, both rechargeable and single use --Cadmium, Copper and (in older batteries) Mercury
- Cell Phones-- Antimony , Arsenic, Beryllium, Cadmium, Copper, Lead, Nickel, Zinc
- Computers and Computer Monitors-- Arsenic, Cadmium, Lead, PCBs
- Electronic Devices-- Lead
- Fluorescent Lamps-- Mercury
- Thermometers-- Mercury
- Non-empty Aerosol Cans-- Propane, Butane, Pesticides
- Televisions-- Arsenic, Cadmium, Lead, PCBs

*City-Wide Commercial and Multi-Family Mixed Waste Bin Processing  
(to recover additional recyclables)*

The City-Wide Mixed Waste Processing Program removes recyclable material from the trash at a Material Recovery Facility (MRF) in order to increase diversion rates and reduce landfill tonnage. While residential recycling rates exceed 50-60% diversion, commercial (which includes Multi-Family) recycling rates are estimated at 20-30%. These low diversion rates inspired the Environmental Task Force to recommend the Mixed Waste Processing Program. Many factors contribute to the low diversion rates including employee training, space and design for recycling inside businesses and multi-family complexes, and employee and multi-family resident turnover. *This program is recommended to be implemented in addition to the recycling program that is in place. It will not replace recycling cans, carts or bins.* It is a joint effort to capture all unnecessary waste from entering the landfill; this program provides the assistance to remove recyclables from the trash so that they can be made into new products instead of filling up the landfill.

The Request for Proposal requires that the hauler *recover* 1,365 tons per year of recyclables from the commercial and multi-family trash bins. In addition to this requirement, the Request for Proposal required haulers to submit pricing to *recover* an additional 2,184 tons of recyclables from commercial and multi-family trash bins. These additional 2,184 recovered tons represent approximately 5% of the total waste collected currently by the city's hauler that is transported to a landfill. If the Optional Service is selected by Council, a total of 3,549 tons of recyclables will be *recovered and recycled* instead of landfilled. The cities of Redondo Beach and West Hollywood utilize similar programs to increase diversion rates and reduce landfill tonnage from their business community.

*Residential Food Waste Program*

The Residential Food Waste program includes common recyclables and green waste that is diverted from the trash and is putrescible, otherwise known as "food waste." Landfills accept millions of pounds of food waste each year.

According to the US Department of Agriculture, Americans throw away more than 25 percent of the food prepared, about 96 billion pounds of food waste each year. Food waste includes uneaten food and food preparation scraps from residences or households, and commercial establishments

like restaurants, grocery stores, and cafeterias. The food service industry estimates that 4% to 10% of food purchases become waste before ever reaching a guest.

Food waste diversion programs are quite common in Northern California; however few are found in Southern California due to the few number of composting facilities. Although the Request for Proposal required only a 90 day pilot program to be conducted in summer 2012, two proposers, Athens and Crown, have the infrastructure in place to begin a complete residential food waste diversion program in the first year of service. Food waste will be included with the green waste in the green waste bin and “reverse sorted” at the companies’ facilities. Waste Management’s proposal included compliance for the 90 day pilot program in summer 2012.

*Commercial Food Waste Program*

The Commercial Food Waste program is required in the Request for Proposal as only a 90 day pilot program to be conducted in summer 2012. However, the same two proposers, Athens and Crown, who have the capabilities to launch a formal residential food waste program can launch the same for commercial in the first year of service. This includes restaurants, grocery stores, office buildings with kitchens, schools, etc. Waste Management’s proposal included compliance for the 90 day pilot program in summer 2012.

*Summary of Hauler Proposal Data*

The evaluation of the various proposals is an interactive process whereby the City established core service requirements and consideration of various Optional Services. Haulers submitted proposals with costs and modifications to the requirements that represented the strength and capabilities of their company. Because of the variety of ways of evaluating proposals, Tables 1-11 in Attachment 1 assist in comparing costs and performance of the three proposers.

**CONCLUSION:**

Unlike the evaluation of many public contracts where the recommendation is generally of low cost, the solid waste contract involves multiple criteria that have different value, for different reasons for different people. Adding to that are the haulers that have different strengths in service, cost, and experience, all making the selection more difficult.

With these considerations, Staff recommends that the City Council select the service level to include all Optional Services and enter into the attached contract with Crown Disposal.

Staff recommends that the Finance Subcommittee review the attached (3) final draft refuse franchise agreements and provide a recommendation for award of contract for the February 15, 2011 City Council meeting.

Based on the types of services proposed, Staff recommends Crown Disposal for the seven year franchise agreement to include all services, including Optional Services, with an estimated first year cost of \$3,150,000.

**Attachments:**

- (1) Summary of Hauler Proposer Data: Tables
- (2) Summary of Solid Waste Services Proposals (HF&H Consultants)



Agenda Item #: \_\_\_\_\_

- (3) Evaluation Summary (HF&H Consultants)
- (4) Final Draft Franchise Agreement – Athens Services
- (5) Final Draft Franchise Agreement – Crown Disposal
- (6) Final Draft Franchise Agreement – Waste Management

Cc: Laith Ezzet, HF&H Consultants, LLC  
Bruce Moe, City of Manhattan Beach Finance Director

**Attachment 1**  
**Summary of Hauler Proposal Data: Tables**  
**January 24, 2011 Finance Subcommittee Meeting**

Tables 1-5 show comparative data with Optional Services (Staff recommended). Table 6 shows guaranteed diversion rates with and without Optional Services, and Tables 7-11 show comparative data *without* Optional Services.

The Tables include:

1. Monthly Residential Rate With Optional Services
2. Monthly Multi-Family Dwelling Rates With Optional Services
3. Monthly Commercial Bin Rates With Optional Services
4. First Year Revenue With Optional Services
5. Seven Year Revenue With Optional Services
6. Hauler Diversion Rates With & Without Optional Services
7. Monthly Residential Rate Without Optional Services
8. Monthly Multi-Family Dwelling Rates Without Optional Services
9. Monthly Commercial Bin Rates Without Optional Services
10. First Year Revenue Without Optional Services
11. Seven Year Revenue Without Optional Services

*Residential Rate Comparison WITH OPTIONAL SERVICES*

The residents of Manhattan Beach currently pay a flat rate every month for **trash carts only**; recycling and green waste service is at no additional charge. The City Council accepted the Environmental Task Force’s recommendation to change residential billing to a tiered rate structure, otherwise known as “Pay as You Throw.” This style of billing bases rates on size and quantity of **TRASH CARTS ONLY**. *Recycling and green waste services will still be at no additional charge.* Tiered rate structures promote waste reduction and incentivize the residents through reduced trash rates to send less to the landfill. According to a study conducted by HF&H Consultants, LLC, roughly half of California cities use a tiered rate structure, and as old contracts expire, the industry trend is to move toward tiered rates.

Table 1:  
**MONTHLY RESIDENTIAL RATE WITH OPTIONAL SERVICES**

Proposer	Refuse Cart Size* (sorted low to high)		
	32-Gallon	64-Gallon	96-Gallon
Crown **	\$ 7.10	\$ 11.10	\$ 15.10
Athens	\$ 7.12	\$ 11.12	\$ 15.12
WMLA – Used Carts***	\$ 8.65	\$ 12.65	\$ 16.65
WMLA – New Carts	\$ 9.51	\$ 13.47	\$ 17.47
WRI	\$ 13.63	\$ 17.63	\$ 21.63
Current Rate (no HHW, food or mixed waste processing)	\$12.02 – unlimited service		

\* Includes optional service (HHW). Does not include City Recovery Costs.

\*\*The residential & commercial food waste programs are part of Crown’s base proposal to reach 70% diversion.

\*\*\* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

*Multi-Family Dwelling Cart Rate Comparison*

Multi-Family Dwelling (MFD) customers who utilize carts will pay a flat fee per dwelling unit up to 9 units. Table 9 below shows the rates for MFD's with 2, 3, and 4 units. Properties with more than 9 units are required to utilize bin service for the tenants and will be billed commercial bin rates.

Table 2:  
MONTHLY MULTI-FAMILY DWELLING CART RATE WITH OPTIONAL SERVICES  
(FLAT RATE)

Proposer	Number of Units (sorted low to high)		
	2 Units	3 Units	4 Units
Crown	\$ 21.65	\$ 32.75	\$ 43.85
Athens	\$ 21.86	\$ 32.98	\$ 44.10
WMLA – Used Carts	\$ 26.12	\$ 38.98	\$ 51.83
WMLA – New Carts	\$ 27.88	\$ 41.63	\$ 55.36
WRI	\$ 30.36	\$ 40.36	\$ 50.36
Current Rate	\$ 22.83	\$ 33.05	\$ 43.27

*Commercial Cart and Bin Rate Comparison*

Commercial rates are currently in a tiered structure, and will continue to do so in the awarded contract. Currently commercial customers only have the option of using multiple 32-gallon cans or large bins. In the new franchise agreement, commercial customers will have a choice of 32, 64 or 96 gallon carts as well as the large bins. This flexibility will provide businesses with multiple cans the opportunity to consolidate to one larger cart.

Table 3:  
MONTHLY COMMERCIAL BIN RATE WITH OPTIONAL SERVICES: (1) 2-YARD BIN

Proposer	Refuse Cart Size*		
	(1) 2-yard bin, 1x p/ week	(1) 2-yard bin, 2x p/ week	(1) 2-yard bin, 3x p/ week
Crown	\$ 72.00	\$ 105.11	\$ 145.00
Athens	\$ 55.29	\$ 104.83	\$ 154.37
WMLA – Used Carts**	\$ 78.51	\$ 122.69	\$ 163.56
WMLA – New Carts**	\$ 78.51	\$ 122.69	\$ 163.56
WRI	\$ 108.90	\$ 213.40	\$ 325.60
Current Rate (no food or mixed waste processing)	\$ 66.73	N/A	N/A

\* Does not include City Recovery Costs.

\*\*Waste Management will only commit to perform the 90 day pilot program in summer 2012.

*Seven (7) Year Rate Revenue (Tables 5 & 11) and First Year Rate Revenue (Tables 4 & 10)*  
 In each of the proposers bid package, they are required to submit their projected first year revenue. Since each hauler may amortize their contract costs differently and each proposer has unique disposal cost adjusters, the first year rate revenue is not always the “tell tale sign” of a hauler’s affordability. The most reasonable basis for cost comparison is the contract-term revenue, which in the case of Manhattan Beach is seven (7) years. HF&H Consultants, LLC calculated the seven year revenue for each proposer utilizing the first year revenue (provided by the hauler) and each hauler’s individual adjustment components.

Table 4:  
 FIRST YEAR REVENUE WITH OPTIONAL SERVICES

Proposal	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	\$ 3,051,000	---
Crown	\$ 3,150,000	3.0%
WMLA/Used Carts*	\$ 3,533,000	15.7%
WMLA	\$ 3,673,000	20.3%
Current Annual Revenue (no optional services included)	\$ 3,152,000	3.3%

\* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 5:  
 SEVEN YEAR REVENUE WITH OPTIONAL SERVICES

Proposal	Rate Revenue Over 7-Year Term	% Above Lowest Rate Revenue Proposer
Athens	\$ 23,400,000	---
Crown	\$ 23,800,000	1.7%
WMLA/Used Carts*	\$ 27,100,000	15.8%
WMLA	\$ 28,200,000	20.5%

\* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

*Overview of Proposers' Diversion*

Table 6:

**HAULER DIVERSION RATES WITH & WITHOUT OPTIONAL SERVICES**

Proposal	WITH OPTIONAL SERVICES Guaranteed Diversion*	WITHOUT OPTIONAL SERVICES Guaranteed Diversion
Athens/Food Waste	55%	50%
Crown/Food Waste**	70%	65%
WMLA/Used Carts	57%	50%
WMLA/New Carts	57%	50%

\*Athens provided an additional cost for permanent food waste diversion programs. Crown included permanent food waste collection in its base proposal and WMLA was not offering such a program at this time.

\*\* Crown proposed to mixed waste process all residential trash and commercial trash at no additional cost, therefore reaching a higher diversion goal than the other proposers.

Table 7:

**MONTHLY RESIDENTIAL RATES WITHOUT OPTIONAL SERVICES**

Proposer	Refuse Cart Size* (sorted low to high)		
	32-Gallon	64-Gallon	96-Gallon
Athens	\$ 6.18	\$ 10.18	\$ 14.18
Crown**	\$ 6.55	\$ 10.55	\$ 14.55
WMLA – Used Carts***	\$ 8.25	\$ 12.25	\$ 16.25
WMLA – New Carts	\$ 9.11	\$ 13.11	\$ 17.11
WMLA Previously Negotiated for 07/01/201	\$ 11.91	\$ 13.61	\$ 15.44
WRI	\$ 13.27	\$ 17.27	\$ 21.27
Current Rate	\$12.02 – flat rate, unlimited service		

\* Excluding optional services. Does not include City Recovery Costs.

\*\*The residential & commercial food waste programs are part of Crown's base proposal to reach 70% diversion.

\*\*\* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 8:  
MONTHLY MULTI-FAMILY DWELLING CART RATE WITHOUT OPTIONAL SERVICES  
(FLAT RATE)

Proposer	Number of Units (sorted low to high)		
	2 Units	3 Units	4 Units
Athens	\$ 20.36	\$ 30.54	\$ 40.72
Crown*	\$ 21.10	\$ 31.65	\$ 42.20
WMLA – Used Carts	\$ 22.17	\$ 33.26	\$ 44.34
WMLA – New Carts	\$ 23.69	\$ 35.54	\$ 47.38
WMLA Previously Negotiated for 07/01/11	\$ 25.47	\$ 36.88	\$ 48.28
WRI	\$ 30.00	\$ 40.00	\$ 50.00
Current Rate	\$ 22.83	\$ 33.05	\$ 43.27

\*Crowns base rate includes the Food Waste program.

Table 9:  
MONTHLY COMMERCIAL BIN RATE WITHOUT OPTIONAL SERVICES:  
(1) 2-YARD BIN

Proposer	Refuse Cart Size*		
	(1) 2-yard bin, 1x p/ week	(1) 2-yard bin, 2x p/ week	(1) 2-yard bin, 3x p/ week
Athens	\$ 55.29	\$ 104.83	\$ 154.37
Crown	\$ 72.00	\$ 105.11	\$ 145.00
WMLA – Used Carts**	\$ 67.68	\$ 105.77	\$ 141.00
WMLA – New Carts**	\$ 67.68	\$ 105.77	\$ 141.00
WRI	\$ 99.00	\$ 194.00	\$ 296.00
Current Rate (no food or mixed waste processing)	\$ 66.73	\$ 100.10	\$ 133.45

\* Does not include City Recovery Costs.

\*\* Waste Management will only commit to perform the 90 day pilot program in summer 2012.

Table 10:  
FIRST YEAR REVENUE WITHOUT OPTIONAL SERVICES

<b>Proposal</b>	<b>Rate Revenue Over 7-Year Term</b>	<b>% Above Lowest Rate Revenue Proposer</b>
Athens	\$ 2,846,000	--
Crown	\$ 3,047,000	7.1%
WMLA/Used Carts*	\$ 3,295,000	15.8%
WMLA/New Carts	\$ 3,435,000	21%
Current Annual Revenue	\$ 3,152,000	11%

\* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

Table 11:  
SEVEN YEAR REVENUE WITHOUT OPTIONAL SERVICES

<b>Proposal</b>	<b>Rate Revenue Over 7-Year Term</b>	<b>% Above Lowest Rate Revenue Proposer</b>
Athens	\$ 22,300,000	--
Crown	\$ 23,000,000	3.1%
WMLA/Used Carts*	\$ 25,300,000	13.4%
WMLA/New Carts	\$ 26,300,000	17.9%

\* RFP required new carts City-wide. WMLA provided an alternative proposed if permitted to continue using existing carts in the previously automated portion of the City. The Sand Section does not yet use carts and would receive new carts.

**Attachment 2**  
**City of Manhattan Beach**  
**Summary of Proposals (in alphabetical order)**

	PROPOSING ENTITY	REGIONAL HEADQUARTERS	MANHATTAN BEACH CONTRACT REVENUE AS A % OF COMPANY REVENUE	PROPOSED START DATE
<b>Athens</b>	Arakelian Enterprises, Inc. dba Athens Services	City of Industry	2%	June 1, 2011
<b>Crown</b>	Crown Disposal Co., Inc.	Sun Valley	7%*	June 1, 2011
<b>Waste Management</b>	USA Waste of California, Inc., dba Waste Management of Los Angeles	Long Beach, CA	<0.01%	June 1, 2011
<b>Waste Resources</b>	Waste Resources, Inc.	Los Angeles	36%	July 1, 2011

\* Calculation does not include revenue from sister company Community Recycling and Resource Recovery reported as \$50 million/year.

	PROPOSED FIRST YEAR RATE REVENUE *		PROJECTED 7-YEAR RATE REVENUE**	PROPOSED DIVERSION RATE	# OF CONTRACT EXCEPTIONS ACCEPTED BY CITY
	WITHOUT OPTIONAL SERVICES	WITH OPTIONAL SERVICES			
<b>Athens</b>	\$2.8 million	\$2.9 million	\$22.3 million	50%	0
<b>Athens - food waste</b>	\$3.0 million	\$3.1 million	\$23.0 million	55%	0
<b>Crown - food waste</b>	\$3.0 million	\$3.1 million	\$23.0 million	70%	0
<b>Waste Management - Used Carts</b>	\$3.3 million	\$3.5 million	\$25.3 million	50% 1 <sup>st</sup> year, increasing to 55% in 6 <sup>th</sup> year	4
<b>Waste Management - New Carts</b>	\$3.4 million	\$3.7 million	\$26.3 million		4
<b>Waste Resources</b>	\$5.1 million	\$5.3 million	\$39.4 million	44%	0

\* Based upon average proposed cart distribution assumptions.

\*\* Based upon proposed cost component weightings and proposed disposal cost adjustment factors.

	RESIDENTIAL HHW DOOR-TO-DOOR PROGRAM	COMMERCIAL/MULTI-FAMILY BIN RATE INCREASE TO PROCESS 100% OF BIN WASTE	RATE CAP/DISPOSAL COMPONENT ADJUSTMENT	LOS ANGELES COUNTY EXPERIENCE # OF EXCLUSIVE FRANCHISES
<b>Athens</b>	\$0.38 per household per month	Included at no additional charge.	Disposal cost component, including landfill and green waste, adjusted by the change in the CPI (All urban consumers - Los Angeles, Riverside, Orange County), or 5%, whichever is less. Any increase in excess of 5% will be carried forward to next year. Under option without food waste there is a one-time extraordinary adjustment for green waste processing costs due to closure of Puente Hills Landfill in 2013.	19
<b>Crown</b>	\$0.55 per household per month	Included at no additional charge.	First year rate adjustment waived. Processing of incoming tonnage, including green waste: change in CPI. Disposal of residue: change in actual average per ton disposal cost, capped at dollar change in the Puente Hill Landfill gate rate.	4
<b>Waste Management</b>	\$0.40 per household per month	16% \$173,000/year	Disposal/ green waste rate adjustment factor: CPI for all urban consumers, all items less food and energy index (US city average), capped at 5% per year.	25
<b>Waste Resources</b>	\$0.36 per household per month	10% \$181,000/year	Disposal cost component adjusted based upon the change in the average rate at Puente Hills Landfill, California Waste Services, and WRI's facility Waste Resources Recovery.	1



**DRAFT**

FRANCHISE  
AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

ARAKELIAN ENTERPRISES, INC. DBA ATHENS SERVICES

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

\* \* \*

January 20, 2011

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DRAFT

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

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2. Public Education Plan
3. Initial Rates
4. Rate Adjustment Formula
5. Exhibit Deleted
6. Company’s Faithful Performance Bond
7. Notary Certification
8. City Sponsored Special Events
9. Optional Programs
10. City Hazardous Waste Manifest
11. Commitment to Environmental Sustainability



## RECITALS

This Franchise Agreement (Agreement) is entered into this \_\_\_ day of \_\_\_\_\_, 2011, 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") (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, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the 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 the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the 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, 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, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the 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 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**

"AB 939" 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 the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the 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 the 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 (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

#### **1.4 Agreement**

"Agreement" means this Franchise Agreement between the City and the 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.

#### **1.5 Section Deleted**

#### **1.6 Section Deleted**

#### **1.7 Billings**

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the 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 2 to 6 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 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. 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 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.

**1.11 Can**

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

**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 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 the City as presently existing or as such boundaries may be modified during the term of this Agreement.

**1.14 Collect/Collection**

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

**1.15 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, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

**1.16 Company**

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

**1.17 Company Compensation**

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

**1.18 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.

**1.19 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 3.3.5.

**1.20 Construction and Demolition Waste**

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

**1.21 Containers**

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

**1.22 CPI**

"CPI" means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index - U.S. city average.

**1.23 Customer**

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

**1.24 Disposal**

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

**1.25 Disposal Site(s)**

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

**1.26 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."

**1.27 Environmental Laws**

"Environmental Laws" means all federal and State statutes, county, local and the 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.

**1.28 Facility**

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

**1.29 Franchise**

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

**1.30 Food Waste**

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste programs included in Sections 3.2.7, 3.2.8 and 3.2.9, which 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); and,
- Tea bags, coffee grounds and filters.

**1.31 Green Waste**

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.



### **1.32 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.

### **1.33 Hazardous Waste**

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

### **1.34 Household Hazardous Waste (HHW)**

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

**1.35 Materials Recovery Facility**

“Materials Recovery Facility” 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.

**1.36 Mixed Waste Processing**

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

**1.37 Multi-Family**

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

**1.38 Section Deleted**

**1.39 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.

**1.40 Permanent Rolloff Box Service**

“Permanent Rolloff Box Service” means the Collection of Solid Waste generated from ongoing operations at a Customer’s place of business using Rolloff 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 Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

**1.41 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.

**1.42 Premises**

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

**1.43 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.

**1.44 Rate Year**

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

**1.45 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.

**1.46 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 Refuse.

**1.47 Refuse**

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

**1.48 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.

**1.49 Rolloff Box**

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

**1.50 Sand Section**

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

**1.51 Single-Family**

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

**1.52 Solid Waste**

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

**1.54 State**

"State" means the State of California.

**1.54 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

Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business' ongoing operations is not included.

**1.55 Transformation**

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

**1.56 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), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

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

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

#### 2.2 Administrative and Extension Fees

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the City for its staff time and out-of-pocket costs of awarding this Franchise.

Additionally, the Company shall pay to the City an Extension Fee equal to \$60,000 (\$60,000) per month for each month the start of service is delayed beyond June 1, 2011 if this delay is due to City Council's award of this Agreement being extended past February 15, 2011. Company will endeavor to meet the start date in June even if delayed. However, if award of this Agreement is delayed and Company cannot start, and if the current contractor charges City this fee, Company will pay the fee when the cost is incurred by City for the additional cost paid to the previous contractor for the extension of the prior agreement.

#### 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 the Company under this Agreement shall be exclusive to the Company. The 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 the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the 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 \_\_\_\_\_ ("effective date").

#### **2.5 Term of Agreement**

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

#### **2.6 Conditions to Effectiveness of Agreement**

The obligation of the 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 the City.

- a) **Accuracy of Representations.** Representations and warranties made by the 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 the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) **Furnishing of Insurance and Bonds.** The Company has furnished evidence of the insurance and bonds required by Article 8.

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

## **2.7 Proposition 218**

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of Article XIII D of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIII D with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIII D, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty 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 XIII C, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty 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.

## **2.8 Delegation of Authority**

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

## **2.9 Limitations on Scope of Franchise**

The Franchise granted to the 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 the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;
- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- 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 said licensed company or by the 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) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) 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;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;

- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold.
- 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 the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the 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, "niche" Recycling services, and Hazardous Household Waste pickups.

This grant to the 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 the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the 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 the City shall not be responsible for any lost profits claimed by the 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 the 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**

The City may direct the 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 the City may direct. The 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**

The Company shall present, within 30 days of a request to do so by the 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**

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within

ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the 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 the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the 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 the City exercises such right by providing specific written direction to the Company, the 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 the Company. Subject to the provisions of this Agreement, the 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 the Company. The 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 the City has such ownership or possession unless such written notice has been given to the Company.

## **2.12 Company Status**

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

### **2.13 Company Authorization**

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the 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 the Company have authority to do so. Company shall authorize one employee for the 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 the Company.

### **2.14 Annexations**

This Agreement extends to any territory annexed to the 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 shall be added to the Franchise area covered by this Agreement. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

### **2.15 Business License**

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the 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 Refuse Collection Services

The work to be done by the 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 the Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by the 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 Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with new Refuse Carts of 96- 64- or 32-gallons, as requested by Customer as described in Section 3.7.1.1. Single Family Customers shall be charged based upon the size and number of Refuse 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. 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.

### **3.1.2 Refuse Cart Overage**

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) 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 provide a three-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 Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse 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 Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

### **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 Refuse 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 Temporary Bin Services**

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. 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.

#### **3.1.3.3 Commercial Cart or Can Service**

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans 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.



#### **3.1.3.4 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.

#### **3.1.3.5 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 Rolloff Box Service**

Company must provide permanent Rolloff 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 Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff 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 the Company with forty-eight (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 or disposed of 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) Disposal

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, 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 (3) items out for Collection per pick-up.

### **3.1.5.2 Commercial Customers**

Company may charge Commercial Bin, Cart, and Can 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 and Cans 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, 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, 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, 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.

### **3.2 Recycling Services**

#### **3.2.1 Residential Recycling Service**

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse 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 new 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Section 3.7.1.1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

### **3.2.2 Commercial Recycling**

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

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

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. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, 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. 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 (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse 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 the 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 the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers - Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for seven-gallon Rehrig-Pacific Containers were approximately \$10.00 per Container.

### **3.2.3 Funding of City Recycling Needs**

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City's Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1<sup>st</sup> as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
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August 1 <sup>st</sup> , 2011	\$28,000	July 1 <sup>st</sup> , 2015	\$32,000
July 1 <sup>st</sup> , 2012	\$29,000	July 1 <sup>st</sup> , 2016	\$33,000
July 1 <sup>st</sup> , 2013	\$30,000	July 1 <sup>st</sup> , 2017	\$34,000
July 1 <sup>st</sup> , 2014	\$31,000	July 1 <sup>st</sup> , 2018*	\$35,000

\* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

### **3.2.4 Construction and Demolition Waste Recycling**

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

- Following the 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 it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff 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 the City annually to educate them on Construction and Demolition Waste diversion.

### **3.2.5 Marketing and Sale of Recyclable Materials**

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

### **3.2.6 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 optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green 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.

### **3.2.7 Residential Food Waste Diversion Pilot Program**

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Residential Cart Customers. Program shall be subject to City approval. Company shall conduct the approved Residential food waste pilot program at no additional cost to City or ratepayers, beginning July 1, 2012 (unless start date is extended by City).

Pilot program shall be conducted for a minimum of six months. Participants shall include one full Residential route for one day each week. Company shall develop, produce and deliver public education materials to all Customers on the participating route. Materials shall be subject to advance City approval.

Company shall collect baseline tonnage data from this route for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company

shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

### **3.2.8 Commercial Food Waste Diversion Pilot Program**

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Commercial Food Waste generating Customers. Program shall be subject to City approval. Company shall implement a Commercial Food Waste pilot program for a minimum of six months beginning July 1, 2012 (unless start date is extended by City) for 10% of Food Waste generating Commercial Customers in the City at no additional cost to either City, participants or rate payers.

Prior to the start of the pilot program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Refuse capacity prior to the start of the pilot. Company collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of food waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Commercial food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

### **3.2.9 Permanent Food-Waste Program**

City may request Company to implement both Residential and Restaurant on-going Food Waste programs at the start of service under this agreement. If City directs Company to implement these permanent programs under this section, Company shall be required to achieve a minimum of 55% diversion rate under Section 3.8.1 and will be compensated in accordance with the alternative food waste rate schedules included in Exhibit 3.



Under the Residential Food Waste program, Company shall educate Residential Cart Customers to place Food Waste in their Green Waste Cart for co-Collection and Composting by Company.

Under the Restaurant Food Waste program, Company shall co-Collect Refuse and Food Waste from food waste generating Commercial Customers. Customers on these routes shall be asked, but not required, to sort Food Waste into compostable bags delivered to Customer at no additional charge by Company and place these bags in their Refuse Containers. Company shall sort the material from these routes to remove and compost bagged Food Waste, and to remove non-compostables from the mixed waste stream and send the remaining Refuse for composting as well.

### **3.3 Green Waste Program**

#### **3.3.1 Residential Green Waste Collection**

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one new 96-, 64- or 32-gallon Green Waste Cart in accordance with Section 3.7.1.1. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

#### **3.3.2 Rolloff Box Service**

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

### **3.3.3 Holiday Tree Collection Program**

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family 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 the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they included ornaments, garlands, and tinsel, and stands.

### **3.3.4 End Uses for Green Waste**

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

### **3.3.5 Compost Bin Distribution**

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill 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 the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the 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 three annual, one-hour composting classes, in May, July and October of each year.

### **3.3.6 Compost Give-a-ways**

Twice per year, Company will provide two 40-yard containers of compost at a location of the City's choosing. Residents may pickup this compost on a first-come-first-service basis using resident-provided bags.

### **3.4 Warning Notice**

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

### **3.5 Commercial Mixed Waste Processing**

Company shall process all Bin Refuse, resulting in recovery of a minimum of 3,549 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not

include any business instruction and therefore does not need to be placed in outreach materials.

### **3.6 City Services**

#### **3.6.1 City Facilities Collection**

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the 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 the Company and the City. Company will provide all Containers required.

#### **3.6.2 City Facilities Hazardous Waste Collection**

Company shall Collect as needed and properly dispose of hazardous waste that is 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 10. 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 10 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 by City at no additional charge.

#### **3.6.4 Street and Park Litter Containers**

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, 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. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

### **3.6.5 City Sponsored and Non-City Sponsored Events**

The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. 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. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes and liners at Company's cost.

### **3.6.6 Emergency Collection and Disposal Service**

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/ tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

### **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 mailed to the resident. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$65.00 per container. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in

Exhibit 9, 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. This program will be provided at no additional charge to City or Customers beginning the first day of the start of service under this Agreement.

### **3.7 Containers**

#### **3.7.1 Carts**

##### **3.7.1.1 Residential Cart Distribution**

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, 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 (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

### **3.7.1.2 Removal of Existing Containers**

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans 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 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 25% recycled material and be recyclable.

### **3.7.1.4 Capacity**

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-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:

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

### **3.7.1.5 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.

### **3.7.1.6 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.

### **3.7.1.7 Cart Colors**

The Refuse, Recycling and Green 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. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

### **3.7.1.8 Cart Labeling**

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including 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. The City's logo and, if requested by City, the City 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).

**3.7.1.9 Identification Markings**

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

**TRASH, RECYCLING** or **GREENWASTE** 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 Load Capacity**

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.

<b>Cart Size (Gallons)</b>	<b>Minimum Load Capacity (LBS)</b>
<b>90-101</b>	<b>200</b>
<b>60-70</b>	<b>130</b>
<b>30-40</b>	<b>70</b>

### **3.7.2.2 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 Contract:

- 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 the City.

### **3.7.2.3 Chemical Resistant**

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

### **3.7.2.4 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.

#### **3.7.2.5 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.

#### **3.7.2.6 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 Can Design and Performance Requirements**

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

#### **3.7.3.1 Capacity**

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-

gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

#### **3.7.3.2 Can Handles**

The Can handles will provide comfortable gripping area for carrying the Can.

#### **3.7.3.3 Can 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;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

#### **3.7.3.4 Can Colors**

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

#### **3.7.3.5 Identification Markings**

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

#### **3.7.3.6 Can Load Capacity**

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

#### **3.7.3.7 Can Durability**

Cans 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 Contract:

- 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 Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

#### **3.7.3.8 Chemical Resistant**

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

### **3.7.3.9 Reparability or Replacement**

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

### **3.7.4 Cart and Can Ownership and Maintenance Responsibilities**

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

### **3.7.5 Bins and Compactors**

The 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. The 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. 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 twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the 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. The 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 the City. Company shall repaint Bins upon the City's request.

### **3.7.6 Rolloff Boxes**

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the 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. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

## **3.8 Diversion Requirements**

### **3.8.1 Hauler Diversion Requirements**

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation is 50% of the waste Collected by Company under this Agreement during each year of this Agreement; 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). If City instructs Company to implement Food Waste diversion programs per Section 3.8.1, this minimum diversion rate shall be 55%. Diversion achieved by Transformation shall be credited toward reaching this diversion requirement only to the extent that the State grants the 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 City-wide Diversion Rate**

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the

Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the 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. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. 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.

The 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 the City once annually upon 30-day written notice requesting said 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 the City, the Company shall revise its plan incorporating any changes



into a revised plan and review said revised plan with the City within thirty (30) calendar days.

### **3.9.2 Vehicles**

**A. General.** The 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. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The 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.** Company will use Collection vehicles model year 2010 or newer. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) 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 SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the 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 such changes in law.

**C. Vehicle Identification.** The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

**D. Cleaning and Maintenance**

- 1) The 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. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The 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. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The 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 the City upon request.
- 5) The 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. The 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 the City, the Company shall furnish the 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. The 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 twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the 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 the Zonar V2J High-Definition GPS/ Vehicle Diagnostics system and enable the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

**F. City Inspection Per Code.** The 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. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

**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 the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

**H. Correction of Defects.** Following any inspection, the Public Works Director shall have the right to cause the 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.

### **3.9.3 Litter Abatement**

**A. Minimization of Spills.** The 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, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of 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.

The 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 the City.

**B. Clean Up.** During the Collection or transportation process, the Company shall clean up litter in the immediate vicinity of any Solid Waste storage or Collection area whether or not the Company has caused the litter. The Company shall identify

instances of repeated spillage not caused by it directly with the Customer responsible and will report such instances to the City. The City will attempt to rectify such situations with the Customer if the Company has already attempted to do so without success.

#### **3.9.4 Personnel**

The 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The 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.

The 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. The 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The 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.

### **3.9.5 Identification Required**

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

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

### **3.9.6 Fees and Gratuities**

The 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**

The 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**

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The 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 the City. The 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**

The 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. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

### **3.9.10 Job Fair For Displaced Workers**

Company will conduct a job fair for displaced Solid Waste employees that previously worked in the City for prior Solid Waste contractor. Company will interview all interested displaced employees and will make offers of employment to all employees meeting Company standards.

### **3.9.11 Neighborhood Safety Program**

Company drivers shall be trained to report unusual or suspicious situations that the drivers may see on route to assist local law enforcement.

## **3.10 Transportation, Disposal and Processing**

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Sites shall be the Chiquita Canyon Landfill, Sunshine Canyon Landfill, El Sobrante Landfill and Puente Hills Landfill and the approved waste-to-energy facilities shall be the Commerce Refuse to Energy Facility (primary) and the Southeast Resource Recovery Facility. The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The 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 the City designates. In the event that City selects a Disposal Site or other Facility, the 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 the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the 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 the 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 the 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 the 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 the City for an exception on a case-by-case basis.



### 3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual 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 the City. The annual 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 (Refuse, 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, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted

to the Public Works Director and one to the 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 annual 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 the Company's plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

### **3.14 Service Exceptions; Hazardous Waste Notifications**

**A. Failure to Collect.** When Solid Waste is not Collected from any Customer, the 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.** The 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. The 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 the City. In addition to other required notifications, if the 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, the Company will immediately notify the Public Works Director or the Public Works Director's designee.

**C. Hazardous Waste Diversion Records.** The 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**

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

### **3.16 Disposal Capacity Guarantee**

Company guarantees capacity for 19,500 tons per year of Manhattan Beach Refuse for the term of the agreement at the Chiquita Landfill. With City approval that shall not be unreasonably withheld, Company may replace the guarantee at this landfill with a guarantee at another landfill approved under Section 3.10 above. This guarantee is not a limit on Disposal quantities Collected under this Agreement. Should City tonnage exceed the guaranteed Disposal quantity, Company remains fully responsible for Disposal of all Refuse with no adjustment to compensation.

**ARTICLE 4**  
**OTHER SERVICES**

**4.1 Services and Customer Billing**

**4.1.1 Company Billing**

Company shall bill for the services in subsections A and B below.

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

**B. Rolloff Box and Temporary Bin Services.** In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the 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 (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the 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).

**4.1.2 City Billing**

City shall perform all billing under this contract, other than Rolloff 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 the 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 4.1.4 below).

#### **4.1.4 Company Responsible for Service Level Accuracy**

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

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

#### **4.1.5 Review of Billings**

The Company shall review Billings to customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The 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 the 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**

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% 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 permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

##### **B. Time and Method of Payment**

Company shall remit the Franchise Fee payments on or before the thirtieth (30<sup>th</sup>) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30<sup>th</sup>) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the 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 the 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. The 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. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the 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, the Company shall Collect the Refuse, Recyclable Materials, and/or Green 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 that 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 the City monthly.

### **4.2.3 Complaint Documentation**

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said 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 the 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 (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the 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 the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the 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 the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

#### **4.2.5 Government Liaison**

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

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, Environmental Task Force meetings, 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 "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. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

#### **4.2.7 Customer Service Liaison**

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

#### **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.

#### **4.2.9 Transition Process Office**

Company will lease an office/store front in the City during the transition process. Customers will be able to request and obtain Carts or Cans, request information and assistance, learn about sustainability, and have issues handled at this location. This location shall be open, at a minimum, beginning March 2011 through June 2012.

### **4.3 Education and Public Awareness**

#### **4.3.1 Manhattan Beach Zero Waste 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, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods acceptable to the City. Any outreach material utilizing paper, provided and distributed by the 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 approval by the City prior to the Effective 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 the 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 the 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 mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** - At least 30 days prior to August 1, 2011, 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 an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company websites. Company shall update this based on any program, service or date changes.
- **Green Street Scene** - Company shall provide a web-based Recycling program and educational tool "The Green Street Scene" to educate and distribute information to Customers. Company may replace "The Green Street Scene" with an alternative, comparable interactive media subject to City's approval.
- **Instructional Packet Accompanying Company-Provided Containers** - An information packet shall be attached to each set of Carts or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** - Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract 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 the City's request and with City's review and approval of the materials. Notices will be mailed by the City with customer's bills, if size of the item

and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.

- **Annual Notifications of Free Commercial Recycling Services** - Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the 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.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the 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 the new 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, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

#### **4.3.4 Zero Waste Community Events**

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the 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 the City. This name is the exclusive property of the City. City confers a revocable license to Company to use the name "Manhattan Beach Recycles" to help people identify with the civic pride and environmental good of responsibly managing solid waste. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the 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 logo and shall become the property of the City upon distribution. City 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, refuse/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 by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager 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; 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 150 hours of Company staff, or third-party contractor, time per year towards meeting Multi-Family outreach efforts as described in this section.

#### **4.3.7 Commercial Outreach Recognition Program**

Company commits a minimum of 350 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

#### **Green Business Certification Recognition**

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize "green" businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to 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 in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

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

#### 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 business' waste reduction and recycling program.

#### Carpet, Carpet Padding and Textiles

Company will recover and Recycle textiles, synthetic and natural fiber carpet and carpet padding Collected on Bin Refuse routes. For material that does not fit in Customers' Refuse Bins, Customers may call in for Bulky Item Collection of the material, which will be Recycled. Regular Refuse Bulky Item rates will apply.

#### **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 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 to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;

- Conduct a minimum of one assembly promoting recycling at each school in the 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 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;
- 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 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.

#### **4.3.9 Recycling Facility Tours**

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

#### **4.3.10 Additional Recycling and Take-Back Programs**

Company will work with local businesses to continue and improve existing take-back programs.

Company shall conduct quarterly waste characterizations of the Residential Cart Refuse waste stream for the term of the Agreement to evaluate how well Recycling programs are working. Company will provide data to City.

#### **4.3.11 Full-Time Outreach and Education Position**

Company shall hire a full-time employee dedicated to the City of Manhattan Beach to address outreach, community education, training and sustainability requirements under this Agreement and the goals of the City's Environmental Task Force. Company will consider employment for current employees serving such needs, if displaced.

### **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, but not more than once every two years.

## 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 the 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.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

#### 5.2 Initial Rates

The Company Compensation from the start of service under this Agreement through June 30, 2012 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the 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, 2012, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The 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 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. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

## **5.4 Method of Adjustments**

### **5.4.1 General**

For Rate Years beginning July 1, 2012, 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.

### **5.4.2 Cost Components for Rate Adjustment Indices**

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor (1)</u>
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	29%	69%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	11%	20%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	5%	0%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste/ Organics (if applicable)	44%	N/A	Consumer Price Index for All Urban Consumers (CUURA421SA0), all items, Los Angeles-Riverside- Orange County or 5%, whichever is lower, with adjustment above 5% rolled forward to subsequent year
Transformation	4%	N/A	Actual change in the per ton gate rate at the Commerce Waste-to-Energy facility
All Other	7%	11%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

### 5.4.3 Rate Adjustment Steps

#### Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the

December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two - The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 above, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates.

Step Three - Multiply the total weighted percent change from Step Two by the existing Customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Four - Recalculate weightings for the following year based upon these changes.

#### Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

### **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. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of 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 Disposal component adjustments granted under Section 5.3.

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

#### **5.6 Puente Hills Closure Extraordinary Rate Adjustment for Green Waste**

Note: The following extraordinary rate adjustment is not applicable if City implements the Residential Food Waste program described in Section 3.2.9, as this Residential Green Waste is to be composted from the start of service and not sent to Puente Hills as alternative daily cover under the Food Waste program:

If City does not implement the Residential Food Waste program described in Section 3.2.9, Company will deliver Residential Cart Green Waste to the Puente Hills Landfill for use as alternative daily cover. This landfill is scheduled to close during this Agreement term. Company shall be entitled to a one-time 5.5% increase to the monthly

residential cart service rate, effective at the next regularly scheduled rate adjustment after Puente Hills Landfill closes and ceases to accept Green Waste, provided Company delivers the Green Waste for composting and full diversion credit. This shall be considered to entirely compensate Company for any and all additional costs related to the processing and transport of Green Waste. This is the only exception permitted to the Disposal/Green Waste rate adjustment index in Section B.4.2 above.



## ARTICLE 6

### REVIEW OF SERVICES AND PERFORMANCE

#### 6.1 Performance Hearing

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the 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 (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the 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 the 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. The Company may submit other relevant performance information and reports for consideration. The City may request the 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 the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

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

## **6.2 Performance Satisfaction Survey**

If requested by the 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 (10%) of the Residential Customers and ten percent (10%) 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 the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

## ARTICLE 7

### RECORDS, REPORTS AND INFORMATION REQUIREMENTS

#### 7.1 General

The 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, the 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 the City, 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 the City, the records and reports to be maintained and provided by the 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

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said 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 the City shall be segregated from other areas served by the Company.

### **7.2.3 Solid Waste Service Records**

Records shall be maintained by the Company for the 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 pick ups;
- f) Number of Refuse, Recycling, and Green 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**

The 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, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The 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 (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the 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, and verification of Diversion rate. The first audit will be based on the Company's reports and records for Fiscal Year 2012 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). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

### **7.2.7 Payments and Refunds**

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the 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, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to 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.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The 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 twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the 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 the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) 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 the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of 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.

### **7.3.3 Quarterly Reports**

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 the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling 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, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated



companies, and of other entities that may perform services under this Agreement, as the 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.

### **7.3.5 Financial Report**

The City may, at the City's option, request the 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 the 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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

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

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

#### **7.4 Adverse Information**

**A. Reporting Adverse Information.** The Company shall provide the 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 the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the 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 the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

**B. Failure to Report.** The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

#### **7.5 Right to Inspect Records**

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the 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

The Company hereby agrees to and shall indemnify and hold harmless the 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 the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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 the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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 the 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 the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the 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.

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

## **8.2 Hazardous Substances Indemnification**

The Company shall defend with counsel reasonably acceptable to the 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 the Company, its officers, directors, employees, companies 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 the 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 the 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 the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

### **8.3 AB 939 Indemnification**

The Company shall indemnify and hold harmless the 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 the City with respect to the waste stream Collected under this Agreement. Company's indemnification of the City is subject to all of the following restrictions:

- a. The Company's obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the 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 the company's obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company's breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the 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

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

**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: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) 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 project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$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 One Million Dollars (\$1,000,000) per accident.

**C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the 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) The 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 the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
- b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the 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 the 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.

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 the Company for the City.
3. **All Coverages** - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the 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 Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

**F. Verification of Coverage.** The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. 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 the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

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

**G. Companies and Subcontractors.** The 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 (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the 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 (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the 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 the 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 the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the 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 one hundred (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, the 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.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the 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 the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

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

## **8.5 Performance Bond**

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty 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 the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

#### **8.6 Forfeiture of Performance Bond**

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

#### **8.7 Performance Bond 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, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (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 bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

#### **8.8 Property Damage**

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

## **8.9 Pavement Damage**

Company shall be responsible for 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 the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the 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 the Company; and/or (2) to take possession of any or all of the 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 the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the 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 said property in operational condition.

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

The 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, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

## **9.2 Billing and Compensation to the City During the City's Possession**

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the 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 the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

## **9.3 City's Right to Relinquish Possession**

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

#### **9.4 City's Possession Not A Taking**

Except as otherwise expressly provided in the previous paragraph, the 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 the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

#### **9.5 Duration of the City's Possession**

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the 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 the Company.

## ARTICLE 10

### DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

#### 10.1 Events of Default

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

- A. **Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. **Insolvency or Bankruptcy.** If the 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 the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the 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 the Company is entered.
- E. **Failure to Perform.** If the 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 (2) consecutive days or more, unless excused per Section 10.5.
- F. **Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) 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 the 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 Environmental 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 the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the 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 the City by the 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 the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

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

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the 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 the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract 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 the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

## **10.3 Right to Terminate Upon Default**

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the 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 the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.

#### 10.4 Liquidated Damages

A. **General.** The City finds, and the 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 the City as a result of a breach by the 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 the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) 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 the City and that the City has considered and relied on the 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the 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 the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, 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 the City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each

party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Company Initial Here Z.A. City Initial Here \_\_\_\_\_

The 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 (7) days after order, which exceed five (5) such failures annually:  
\$150.00
- b) For each failure to deliver Bins, Carts, or Containers on the day scheduled for delivery that exceeds five (5) 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 (10) 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 (2) consecutive scheduled pickup days:  
\$150.00

2. **Collection Quality**

- a) For each occurrence of damage to private property which exceeds five (5) 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 with lids closed which exceeds ten (10) such occurrences annually:  
\$150.00

- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:
 

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) 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 (10) such failures annually:
 

\$150.00
- f) For each failure to deliver a Rolloff 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 (1) business day, and for each additional day in which the complaint is not addressed:
 

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:
 

\$250.00
- c) For each failure to notify City within one (1) 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 thirty (30) days from the date submitted to Company.
 

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.
 

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversions Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the diversion requirement per Section 3.8.1, beginning with the first full calendar year 2012, and including any partial calendar year at the end of the term: \$25 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/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 (1) day prior to

new service provider servicing Customers with access issues, as described in  
Section 11.8: \$1,000/day

The 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, the City shall give the Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. The Company may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/non-performance. The Company may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. The 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 the 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.** The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

**D. Timing of Payment.** The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the 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.

## **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 the Company's employees or directed at the 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 the 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 the City within ninety (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 the City's satisfaction. 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 Public Works Director sixty (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 (2) 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 the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company is excused from performing its obligations hereunder for any of the causes listed in this section for a period of thirty (30) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

### **10.6 Assurance of Performance**

The City may, at its option and in addition to all other remedies it may have, demand from the Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require. If the Company fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the 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 the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the 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. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

#### 11.2 Compliance with Law

In providing the services required under this Agreement, the 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. The 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 10 (the 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 the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) 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 the Company; (iv) 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the 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 (2) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

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

- a) Company shall pay City its reasonable expenses for attorney's and/or 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 and Company shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.
- b) The Company shall pay a transfer fee to the City equal to 1% 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. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) 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 proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Company's operations.
- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by the Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal or local Environmental Laws and that the assignee has provided the 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

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

#### **11.6 Contracting or Subcontracting**

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the 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, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the 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 covenant and/or other equitable relief necessary to enforce this covenant.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. 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 The Company's Investigation**

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

### **11.12 Condemnation**

The City fully reserves the rights to acquire the 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.

### **11.13 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 the 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 the Company: Chief Operating Officer  
Athens Services  
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.

#### **11.14 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the 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. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such



designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

#### **11.15 City Free to Negotiate with Third Parties**

Notwithstanding the exclusive nature of the Franchise, the 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, the City may solicit proposals from the 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 under Section 10 of this Agreement.

#### **11.16 Compliance with Municipal Code**

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

#### **11.17 Privacy**

The 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 the 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.

**11.18 Compliance with Immigration Laws.**

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

**11.19 Proprietary Information, Public Records**

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

**11.20 Section Deleted**

**11.21 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 to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

## ARTICLE 12

### MISCELLANEOUS AGREEMENTS

#### 12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

#### 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 and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

#### 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 Agreement

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

**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, the City and the 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:

\_\_\_\_\_  
ATHENS SERVICES

\_\_\_\_\_  
City Attorney

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

Name: Ron Arakelian, III

Title: Executive Officer

**EXHIBIT 1**  
**COMPANY PROPOSAL**

*January 20, 2011*

*City of Manhattan Beach/Athens*

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

*January 20, 2011*

*City of Manhattan Beach/Athens*

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**EXHIBIT 3**  
**MAXIMUM INITIAL COMPANY COMPENSATION**

Residential Monthly Rates (through June 30, 2012)

Volume-Based Automated Three-Cart Collection Service for Single Unit Homes	Monthly Rate				
	Standard Service	Backyard Service Surcharge w/o Food Waste (2)	Standard Service w/food waste	Backyard Service Surcharge with Food Waste (2)	Extra Refuse Cart (with or w/o Food Waste)
96-gallon refuse <sup>(1)</sup>	\$ 14.18	\$ 5.09	\$ 14.74	\$ 5.37	\$ 8.00
64-gallon refuse <sup>(1)</sup>	\$ 10.18	\$ 5.09	\$ 10.74	\$ 5.37	\$ 6.00
35-gallon refuse <sup>(1)</sup>	\$ 6.18	\$ 5.09	\$ 6.74	\$ 5.37	\$ 4.00

Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units	Monthly Rate Per Building			
	Standard Service	Backyard Service Surcharge w/o Food Waste (2)	Standard Service w/food waste	Backyard Service Surcharge with Food Waste (2)
2 Dwelling Units	\$ 20.36	\$ 10.18	\$ 21.48	\$ 10.74
3 Dwelling Units	\$ 30.54	\$ 15.28	\$ 32.22	\$ 16.12
4 Dwelling Units	\$ 40.72	\$ 20.37	\$ 42.96	\$ 21.49
5 Dwelling Units	\$ 50.90	\$ 25.46	\$ 53.70	\$ 26.86
6 Dwelling Units	\$ 61.08	\$ 30.55	\$ 64.44	\$ 32.23
7 Dwelling Units	\$ 71.26	\$ 35.64	\$ 75.18	\$ 37.60
8 Dwelling Units	\$ 81.44	\$ 40.73	\$ 85.92	\$ 42.97
9 Dwelling Units	\$ 91.62	\$ 45.83	\$ 96.66	\$ 48.35

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

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

**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(through June 30, 2012)**

**Commercial Bin Rates**

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 12.33	\$ 24.66	\$ 36.98	\$ 49.31	\$ 61.64	\$ 73.97	\$ 86.30	\$ 3.50
32-Gallon Cart	\$ 12.33	\$ 24.66	\$ 36.98	\$ 49.31	\$ 61.64	\$ 73.97	\$ 86.30	\$ 3.50
64-Gallon Cart	\$ 24.66	\$ 49.32	\$ 73.96	\$ 98.62	\$ 123.28	\$ 147.94	\$ 172.60	\$ 7.00
96-Gallon Cart	\$ 36.99	\$ 73.98	\$ 110.94	\$ 147.93	\$ 184.92	\$ 221.91	\$ 258.90	\$ 10.00
2 Cubic Yard	\$ 52.46	\$ 99.46	\$ 146.46	\$ 193.45	\$ 240.45	\$ 287.42	\$ 334.44	\$ 19.35
3 Cubic Yard	\$ 59.96	\$ 114.08	\$ 168.19	\$ 222.30	\$ 276.41	\$ 330.53	\$ 384.64	\$ 29.00
4 Cubic Yard	\$ 67.46	\$ 128.71	\$ 189.96	\$ 251.20	\$ 312.45	\$ 373.70	\$ 434.94	\$ 38.69
6 Cubic Yard	\$ 82.46	\$ 157.96	\$ 233.46	\$ 308.95	\$ 384.45	\$ 459.95	\$ 535.44	\$ 58.01
2 Cubic Yard Compactor	\$ 78.69	\$ 149.19	\$ 219.68	\$ 290.18	\$ 360.68	\$ 431.18	\$ 501.67	\$ 33.04
3 Cubic Yard Compactor	\$ 89.94	\$ 176.29	\$ 262.63	\$ 348.98	\$ 435.33	\$ 521.67	\$ 608.02	\$ 49.15
4 Cubic Yard Compactor	\$ 101.19	\$ 193.07	\$ 284.93	\$ 376.81	\$ 468.68	\$ 560.55	\$ 652.42	\$ 66.64
6 Cubic Yard Compactor	\$ 123.69	\$ 236.94	\$ 350.18	\$ 463.48	\$ 576.68	\$ 689.93	\$ 803.17	\$ 100.27

**Commercial Bin Rates w/Restaurant Food Waste Program**

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 13.00	\$ 25.99	\$ 38.98	\$ 51.97	\$ 64.97	\$ 77.96	\$ 90.96	\$ 3.50
32-Gallon Cart	\$ 13.00	\$ 25.99	\$ 38.98	\$ 51.97	\$ 64.97	\$ 77.96	\$ 90.96	\$ 3.50
64-Gallon Cart	\$ 26.00	\$ 51.98	\$ 77.96	\$ 103.94	\$ 129.94	\$ 155.92	\$ 181.92	\$ 7.00
96-Gallon Cart	\$ 39.00	\$ 77.97	\$ 116.94	\$ 155.91	\$ 194.91	\$ 233.88	\$ 272.88	\$ 10.00
2 Cubic Yard	\$ 55.29	\$ 104.83	\$ 154.37	\$ 203.90	\$ 253.43	\$ 302.94	\$ 352.50	\$ 19.35
3 Cubic Yard	\$ 63.20	\$ 120.24	\$ 177.27	\$ 234.30	\$ 291.34	\$ 348.38	\$ 405.41	\$ 29.00
4 Cubic Yard	\$ 71.10	\$ 135.66	\$ 200.22	\$ 264.76	\$ 329.32	\$ 393.88	\$ 458.43	\$ 38.69
6 Cubic Yard	\$ 86.91	\$ 166.49	\$ 246.07	\$ 325.63	\$ 405.21	\$ 484.79	\$ 564.35	\$ 58.01
2 Cubic Yard Compactor	\$ 82.94	\$ 157.25	\$ 231.54	\$ 305.85	\$ 380.16	\$ 454.46	\$ 528.76	\$ 33.04
3 Cubic Yard Compactor	\$ 94.80	\$ 185.81	\$ 276.81	\$ 367.82	\$ 458.84	\$ 549.84	\$ 640.85	\$ 49.15
4 Cubic Yard Compactor	\$ 106.65	\$ 203.50	\$ 300.32	\$ 397.16	\$ 493.99	\$ 590.82	\$ 687.65	\$ 66.64
6 Cubic Yard Compactor	\$ 130.37	\$ 249.73	\$ 369.09	\$ 488.51	\$ 607.82	\$ 727.19	\$ 846.54	\$ 100.27



**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(through June 30, 2012)**

**Rolloff Box Rates**

<b>Rate Per Pull, Excluding Disposal</b>	
Standard Box, Any Size	\$ 145.00 per pull
Compactor Box, Any Size	\$ 165.00 per pull
<b>Rolloff Per Ton Charges</b>	
Refuse Disposal	\$ 42.00 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 19.95 per ton
<b>Additional Container Rental - (for boxes emptied less than 3x/ month)</b>	
Standard Box, Any Size	\$ 27.68 per week
Compactor Box, Any Size	\$ 37.27 per week

**Optional C&D Rates**

<b>Rate Per Pull, Excluding Disposal</b>	
25-40 cubic yard roll-off box	\$ 165.00 per pull
Low Boy (10 cubic yard) roll-off box	\$ 165.00 per pull
<b>Rolloff Per Ton Charges</b>	
Mixed Loads of C&D Debris	\$ 48.00 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
<b>Temporary Bin Service</b>	
First Dump, including delivery and disposal	\$ 85.00 per dump
Additional dumps, including disposal	\$ 50.00 per dump

**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(through June 30, 2012)**

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 75.65	\$ 85.00	\$ 94.35	\$ 113.50
Each Additional Dump	\$ 33.50	\$ 50.00	\$ 66.50	\$ 100.00
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)

## EXHIBIT 4A

### EXAMPLE CART & BIN RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices					
Row	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/ Column A) -1)
1	Labor	(1)	107.30	109.15	1.7%
2	Fuel	(2)	344.0	159.1	-53.8%
3	Equipment	(3)	118.9	124.3	4.5%
4	Disposal	(5)	215.0	220.0	2.3%
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%
6	All Other	(4)	215.8	219.2	1.6%

Step Two: Determine components					
Row	Adjustment Factor	Index	D Cost Factor Category Weighted as a % of Component Total (7)	E Percent Change In Index (from Column C)	F Total Weighted Change (Columns D x E)
7	Labor	(1)	29.0%	1.7%	0.5%
8	Fuel	(2)	11.0%	-53.8%	-5.9%
9	Equipment	(3)	5.0%	4.5%	0.2%
10	Disposal	(5)	44.0%	2.3%	1.0%
11	Transformation	(6)	4.0%	14.6%	0.6%
12	All Other	(4)	7.0%	1.6%	0.1%
13	Total		100.0%		-3.5%

Step Three: Apply percentage change to rates					
Row	Rate Category	G Current Contractor Rate (8)	H Total Weighted Percent Change (from Column F)	I Rate Increase or Decrease (Column G x Column H)	J Adjusted Rate (Column G + Column I)
14	64-gallon Cart Service	\$ 10.18	-3.5%	\$ (0.36)	\$ 9.82
15	2 unit Service	\$ 30.36	-3.5%	\$ (1.06)	\$ 29.30
16	1 unit backyard surcharge	\$ 5.09	-3.5%	\$ (0.18)	\$ 4.91
17	2 unit backyard surcharge	\$ 10.18	-3.5%	\$ (0.36)	\$ 9.82
18	Extra bulky item	\$ 21.60	-3.5%	\$ (0.76)	\$ 20.84
19	Special Pickup/Cart Ov.	\$ 5.00	-3.5%	\$ (0.18)	\$ 4.82
20	Commercial Can	\$ 12.33	-3.5%	\$ (0.43)	\$ 11.90
21	3 yd bin, 1x week	\$ 59.96	-3.5%	\$ (2.10)	\$ 57.86
22	3 yd comp., 1x week	\$ 89.94	-3.5%	\$ (3.15)	\$ 86.79
23	3 yd bin, extra pickup	\$ 29.00	-3.5%	\$ (1.02)	\$ 27.98

Step Four: Re-weight cost components							
Row	Adjustment Factor	Index	K Cost Component (Column D)	L Percent Change in Index (Column E)	M Change in Cost Component Weightings (Column K x Column L)	N Adjusted Cost Component Weightings (Column K + Column M)	O Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	29.0%	1.7%	0.5%	29.5%	30.6%
25	Fuel	(2)	11.0%	-53.8%	-5.9%	5.1%	5.3%
27	Equipment	(3)	5.0%	4.5%	0.2%	5.2%	5.4%
28	Disposal	(5)	44.0%	2.3%	1.0%	45.0%	46.6%
29	Transformation	(6)	4.0%	14.6%	0.6%	4.6%	4.8%
30	All Other	(4)	7.0%	1.6%	0.1%	7.1%	7.3%
31	Total		100.0%			96.5%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.  
 (2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.\*  
 (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.\*  
 (4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.\*  
 (5) Consumer Price Index for All Urban Consumers (CUURA421SA0 0000SA0L1E), all items, Los Angeles-Riverside-Orange County - average annual change, capped at 5%.\*  
 (6) Gate rate at Commerce Waste-to-Energy facility.  
 (7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.  
 (8) Example rates listed. Adjustment applies to all applicable rate categories.

\* See Exhibit 4C.

## EXHIBIT 4B

### EXAMPLE ROLL-OFF BOX RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change In Index ((Column B/ Column A) -1)
1	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/Ton	(5)	215.0	220.0	2.3%

Step Two: Determine components

Row	Adjustment Factor	Index	D	E	F
			Cost Factor Category Weighted as a % of Component Total (6)	Percent Change In Index (from Step One, Column C)	Total Weighted Change (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	69.0%	1.7%	1.2%
9	Fuel	(2)	20.0%	-53.8%	-10.8%
10	Equipment	(3)	0.0%	4.5%	0.0%
11	All Other	(4)	11.0%	1.6%	0.2%
12	Service Component Total		100.0%	n/a	-9.4%
13	Refuse/Ton	(5)	100.0%	2.3%	2.3%

Step Three: Apply percentage change to rates

Row	Rate Category	G	H	I	J
		Current Customer Rate	Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll-off Box Pull Rate	\$ 145.00	-9.4%	\$ (13.63)	\$ 131.37
15	Compactor Roll-off Box Pull Rate	\$ 165.00	-9.4%	\$ (15.51)	\$ 149.49
16	Refuse/Ton	\$ 42.00	2.3%	\$ 0.97	\$ 42.97

Step Four: Re-weight service component cost components

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change in Index (Column E)	Change in Cost Component Weightings (Column K x Column L)	Adjusted Cost Component Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	69.0%	1.7%	1.2%	70.2%	77.5%
18	Fuel	(2)	20.0%	-53.8%	-10.8%	9.2%	10.2%
19	Equipment	(3)	0.0%	4.5%	0.0%	0.0%	0.0%
20	All Other	(4)	11.0%	1.6%	0.2%	11.2%	12.3%
21	Total		100.0%			90.6%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.\*

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.\*

(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.\*

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.\*

(5) Consumer Price Index for All Urban Consumers (CUURA421SA0 0000SA0L1E), all items, Los Angeles-Riverside-Orange County - average annual change, capped at 5%.\*

(6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

\* See Exhibit 4C.

**EXHIBIT 4C**  
**EXAMPLE CALCULATION FOR**  
**AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES**

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and "all other" are calculated using the "average annual change" as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the "Annual" index, which is an average of the calendar year's monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the "all other" cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the "New Index Value" to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the "Old Index Value" in Column A. This would have resulted in a 1.7% increase to the "disposal" and "all other" cost components in Column C.

**Consumer Price Index - All Urban Consumers, U.S. City Average**  
**All items less food and energy, CUUR000SAOL1E**

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235
<b>Average Annual Change:</b>													<b>1.7%</b>

**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) 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 contract.

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 said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract 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 contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

\_\_\_\_\_  
a \_\_\_\_\_ Corporation

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
(PRINCIPAL)

By: \_\_\_\_\_  
(ATTORNEY IN FACT)

(SEAL)

(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 SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

## EXHIBIT 9

### OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

#### A. Door-to-Door HHW Collection Program

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.38 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.38 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2012.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in to schedule an appointment for the Collection of HHW; with 48-hours notice, Company will Collect HHW on Customers' scheduled service day. 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 in for a pickup. Company shall be required to update the 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 the City's "e-book") in public education mailers required under Section 4.3.2.

#### **B. 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 70% 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.

## EXHIBIT 10

### CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the 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
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

## **EXHIBIT 11**

### **COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY**

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”



**DRAFT**

FRANCHISE  
AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

CROWN DISPOSAL Co., INC.

FOR

INTEGRATED SOLID WASTE  
MANAGEMENT SERVICES

\* \* \*

**January 19, 2011**

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DRAFT

FRANCHISE  
AGREEMENT  
BETWEEN  
CITY OF MANHATTAN BEACH  
AND  
CROWN DISPOSAL CO., INC.  
FOR  
INTEGRATED SOLID WASTE  
MANAGEMENT SERVICES

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2. Public Education Plan
3. Initial Rates
4. Rate Adjustment Formula
5. Exhibit Deleted
6. Company's Faithful Performance Bond
7. Notary Certification
8. City Sponsored Special Events
9. Optional Programs
10. City Hazardous Waste Manifest
11. Commitment to Environmental Sustainability



## RECITALS

This Franchise Agreement (Agreement) is entered into this \_\_ day of \_\_\_\_\_, 2010, by and between the City of Manhattan Beach (City) and Crown Disposal Co., Inc. (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (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, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the 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 the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the 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, 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, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the 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 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**

"AB 939" 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 the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the 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 the 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 (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

**1.4 Agreement**

"Agreement" means this Franchise Agreement between the City and the 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.

**1.5 Section Deleted**

**1.6 Section Deleted**

**1.7 Billings**

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the 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 2 to 6 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 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. 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 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.

**1.11 Can**

"Can" means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

**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 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 the City as presently existing or as such boundaries may be modified during the term of this Agreement.

**1.14 Collect/Collection**

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

**1.15 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, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

**1.16 Company**

"Company" means Crown Disposal Co., Inc., a California corporation and its officers, directors, employees, agents, companies and subcontractors.

**1.17 Company Compensation**

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

**1.18 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.

**1.19 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 3.3.5.

**1.20 Construction and Demolition Waste**

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

**1.21 Containers**

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

**1.22 CPI**

"CPI" means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index - U.S. city average.

**1.23 Customer**

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

**1.24 Disposal**

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

**1.25 Disposal Site(s)**

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

**1.26 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."

**1.27 Environmental Laws**

"Environmental Laws" means all federal and State statutes, county, local and the 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.

**1.28 Facility**

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

**1.29 Franchise**

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

**1.30 Food Waste**

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste programs included in Section 3.2.7, which 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); and,
- Tea bags, coffee grounds and filters.

**1.31 Green Waste**

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.



### **1.32 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.

### **1.33 Hazardous Waste**

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

### **1.34 Household Hazardous Waste (HHW)**

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

**1.35 Materials Recovery Facility**

“Materials Recovery Facility” 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.

**1.36 Mixed Waste Processing**

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

**1.37 Multi-Family**

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

**1.38 Section Deleted**

**1.39 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.

**1.40 Permanent Rolloff Box Service**

“Permanent Rolloff Box Service” means the Collection of Solid Waste generated from ongoing operations at a Customer’s place of business using Rolloff 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 Rolloff Box service used for occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

**1.41 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.

**1.42 Premises**

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

**1.43 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.

**1.44 Rate Year**

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

**1.45 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.

**1.46 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 Refuse.

**1.47 Refuse**

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

**1.48 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.

**1.49 Rolloff Box**

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

**1.50 Sand Section**

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

**1.51 Single-Family**

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

**1.52 Solid Waste**

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

**1.54 State**

"State" means the State of California.

**1.54 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

Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business' ongoing operations is not included.

**1.55 Transformation**

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

**1.56 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), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

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

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

#### 2.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the 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 the Company under this Agreement shall be exclusive to the Company. The 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 the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the 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 \_\_\_\_\_ ("effective date").

**2.5 Term of Agreement**

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

**2.6 Conditions to Effectiveness of Agreement**

The obligation of the 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 the City.

- a) **Accuracy of Representations.** Representations and warranties made by the 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 the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) **Furnishing of Insurance and Bonds.** The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) **Effectiveness of the City Council Action.** The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

**2.7 Proposition 218**

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of

Article XIII D of the California Constitution. City agrees to undertake the notice and protest process as provided in Article XIII D with respect to any proposed rate increase, to the extent required by applicable law. Should a majority protest, as provided for under Article XIII D, invalidate approval of any rate increases provided for herein, City shall have the option to terminate this Agreement with thirty 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 XIII C, Section 3, shall invalidate any portion of the fees imposed by the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty 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.

## **2.8 Delegation of Authority**

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

## **2.9 Limitations on Scope of Franchise**

The Franchise granted to the 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 the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;



- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- 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 said licensed company or by the 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) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) 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;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold.
- 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 the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the 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, "niche" Recycling services, and Hazardous Household Waste pickups.

This grant to the 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 the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the 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 the City shall not be responsible for any lost profits claimed by the 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 the 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**

The City may direct the 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 the City may direct. The 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**

The Company shall present, within 30 days of a request to do so by the 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**

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the 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 the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the 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 the City exercises such right by providing specific written direction to the Company, the 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 the Company. Subject to the provisions of this Agreement, the 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 the Company. The 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 the City has such ownership or possession unless such written notice has been given to the Company.

#### **2.12 Company Status**

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

#### **2.13 Company Authorization**

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the 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 the Company have authority to do so. Company shall authorize one employee for the 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 the Company.

#### **2.14 Annexations**

This Agreement extends to any territory annexed to the 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 shall be added to the Franchise area covered by this Agreement. In such event,

this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

**2.15 Business License**

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the 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 Refuse Collection Services

The work to be done by the 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 the Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by the 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 Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with new Refuse Carts of 96- 64- or 32-gallons, as requested by Customer as described in Section 3.7.1.1. Single Family Customers shall be charged based upon the size and number of Refuse Carts requested. Multi-Family Cart Customers (two or more units) shall continue to be charged a flat rate for unlimited service.

Residential Refuse Cart Processing - Company shall send all Refuse Collected in Residential Refuse Carts for processing to recover Recyclables.

Backyard Service - Customers may request "Backyard Service" for an additional charge in accordance with the approved rate schedule. 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.

### 3.1.2 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) 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 provide a three-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 Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse 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 Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

### **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 Refuse 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.

Upon request, Company shall provide split three and four cubic yard Bins, which have separate Collection compartments in order to accommodate two waste streams in one Container. Company shall be compensated based upon the level of Refuse services received. For example, a split four yard Bin, with two cubic yards of capacity designated for Refuse and two cubic yards designated for Recyclables will be charged the rate for a two cubic yard Refuse Bin, Collected at the frequency at which the Refuse side is Collected.

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 Temporary Bin Services**

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. 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.



### **3.1.3.3 Commercial Cart or Can Service**

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans 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.

### **3.1.3.4 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.

### **3.1.3.5 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 Rolloff Box Service**

Company must provide permanent Rolloff 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 Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff 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 the Company with forty-eight (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 or disposed of 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) Disposal

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, 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 (3) items out for Collection per pick-up.

#### **3.1.5.2 Commercial Customers**

Company may charge Commercial Bin, Cart, and Can 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 and Cans 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, 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, 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, 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.

### **3.2 Recycling Services**

#### **3.2.1 Residential Recycling Service**

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse 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 new 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Section 3.7.1.1. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene);

plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

### 3.2.2 Commercial Recycling

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

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

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. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, 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. 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 (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse 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 the 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 the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers – Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for six-gallon Rehrig-Pacific Containers were approximately \$5.40 per Container.

### 3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City's Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1<sup>st</sup> as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
August 1 <sup>st</sup> , 2011	\$28,000	July 1 <sup>st</sup> , 2015	\$32,000
July 1 <sup>st</sup> , 2012	\$29,000	July 1 <sup>st</sup> , 2016	\$33,000
July 1 <sup>st</sup> , 2013	\$30,000	July 1 <sup>st</sup> , 2017	\$34,000
July 1 <sup>st</sup> , 2014	\$31,000	July 1 <sup>st</sup> , 2018*	\$35,000

\* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

### 3.2.4 Construction and Demolition Waste Recycling

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

- Following the 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 it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff 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 the City annually to educate them on Construction and Demolition Waste diversion.

### **3.2.5 Marketing and Sale of Recyclable Materials**

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

### **3.2.6 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 optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green 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.

### **3.2.7 Permanent Food-Waste Program**

Company shall implement both Residential and Restaurant on-going Food Waste programs within four months of the start of service under this agreement at no additional cost.

Under the Residential Food Waste program, Company shall educate Residential Cart Customers to place Food Waste in their Green Waste Cart for co-Collection. Company shall either Compost the co-Collected material, or sort Food Waste from co-Collected material for processing in a digester and Compost the remaining material.

Under the Restaurant Food Waste program, Company shall offer a combination of approaches to accommodate Food Waste generating Customers, including source-separated Food Waste Collection in separate Containers, co-Collection with Refuse

and/or Collection using split Bins for space-constrained Customers. Food Waste co- Collected with Refuse from Food Waste generating Customers would be reverse sorted to remove non-compostables, with the remainder sent for composting.

### **3.3 Green Waste Program**

#### **3.3.1 Residential Green Waste Collection**

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one new 96-, 64- or 32-gallon Green Waste Cart in accordance with Section 3.7.1.1. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

#### **3.3.2 Rolloff Box Service**

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

#### **3.3.3 Holiday Tree Collection Program**

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family 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 the City in the scheduling and operation of the Holiday Tree



Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they include ornaments, garlands, and tinsel, and stands.

#### **3.3.4 End Uses for Green Waste**

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

#### **3.3.5 Compost Bin Distribution**

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill 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 the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the 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 three annual, one-hour composting classes, in May, July and October of each year.

#### **3.3.6 Compost Give-a-Way**

At no additional charge, Company will provide residents with 300 free 30-pound bags per year of half wood shavings/half compost, or provide up to 100 tons of bulk compost per year for community projects such as community or school gardens, or a combination of the above. Company will deliver bags or bulk material for distribution at City events or for use at schools, gardens, residences or other City locations as requested by City. Delivery times will be mutually agreed upon between Company and City.

### **3.4 Warning Notice**

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be

contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.

### **3.5 Commercial Mixed Waste Processing**

Company shall process all Bin Refuse, resulting in recovery of a minimum of 3,549 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not include any business instruction and therefore does not need to be placed in outreach materials.

## **3.6 City Services**

### **3.6.1 City Facilities Collection**

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the 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 the Company and the City. Company will provide all Containers required.

### **3.6.2 City Facilities Hazardous Waste Collection**

Company shall Collect as needed and properly dispose of hazardous waste that is 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 10. 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 10 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 by City at no additional charge.

### **3.6.4 Street and Park Litter Containers**

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, 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. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during

the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

### **3.6.5 City Sponsored and Non-City Sponsored Events**

The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. 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. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes and liners at Company's cost.

### **3.6.6 Emergency Collection and Disposal Service**

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/ tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

### **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. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$15.00 per container. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in Exhibit 9, 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. This program will be provided at no additional charge to City or Customers beginning the first day of the start of service under this Agreement.

### **3.7 Containers**

#### **3.7.1 Carts**

##### **3.7.1.1 Residential Cart Distribution**

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2). Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, 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 (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

##### **3.7.1.2 Removal of Existing Containers**

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts

and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans 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 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% recycled material and be recyclable.

#### **3.7.1.4 Capacity**

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-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:

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

#### **3.7.1.5 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.

### 3.7.1.6 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.

### 3.7.1.7 Cart Colors

The Refuse, Recycling and Green 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. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

City may request that Company use granite lid covers at no additional cost. Otherwise, Cart and Cart lids will be the same color.

### **3.7.1.8 Cart Labeling**

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including 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. The City's logo and, if requested by City, the City 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).

### **3.7.1.9 Identification Markings**

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

**TRASH, RECYCLING or GREENWASTE** 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 Load Capacity**

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.



<b>Cart Size (Gallons)</b>	<b>Minimum Load Capacity (LBS)</b>
90-101	200
60-70	130
30-40	70

### 3.7.2.2 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 Contract:

- 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 the City.

### **3.7.2.3 Chemical Resistant**

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

### **3.7.2.4 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.

### **3.7.2.5 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.

### **3.7.2.6 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 Can Design and Performance Requirements**

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

#### **3.7.3.1 Capacity**

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

#### **3.7.3.2 Can Handles**

The Can handles will provide comfortable gripping area for carrying the Can.

#### **3.7.3.3 Can 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;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

#### **3.7.3.4 Can Colors**

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet

degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

#### **3.7.3.5 Identification Markings**

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

#### **3.7.3.6 Can Load Capacity**

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

#### **3.7.3.7 Can Durability**

Cans 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 Contract:

- 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 Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,

- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

#### **3.7.3.8 Chemical Resistant**

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

#### **3.7.3.9 Reparability or Replacement**

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

#### **3.7.4 Cart and Can Ownership and Maintenance Responsibilities**

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

#### **3.7.5 Bins and Compactors**

The 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. The 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. 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 twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the 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. The 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 the City. Company shall repaint Bins upon the City's request.

#### **3.7.6 Rolloff Boxes**

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the 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. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

### **3.8 Diversion Requirements**

#### **3.8.1 Hauler Diversion Requirements**

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation is 70% of the waste Collected by Company under this Agreement during each year of this Agreement; 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 the 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 City-wide Diversion Rate**

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the 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. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. 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.

The 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 the City once annually upon 30-day written notice requesting said 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 the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

### 3.9.2 Vehicles

**A. General.** The 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. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The 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.** Company will use Collection vehicles model year 2010 or newer. At no time during the Agreement term shall Company use vehicles for the Collection of Solid Waste in the City that are more than ten (10) 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 SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the 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 such changes in law.

**C. Vehicle Identification.** The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three



inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

**D. Cleaning and Maintenance**

- 1) The 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. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The 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. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The 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 the City upon request.
- 5) The 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. The 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 the City, the Company shall furnish the 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. The 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 twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the 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 the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

**F. City Inspection Per Code.** The 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. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

**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 the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

**H. Correction of Defects.** Following any inspection, the Public Works Director shall have the right to cause the 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.

### **3.9.3 Litter Abatement**

**A. Minimization of Spills.** The 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, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of 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.

The 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 the City.

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

#### **3.9.4 Personnel**

The 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The 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.

The 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. The 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The 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.

### **3.9.5 Identification Required**

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

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

### **3.9.6 Fees and Gratuities**

The 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**

The 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**

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The 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 the City. The 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**

The 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. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

### **3.9.10 Hiring of Displaced Workers**

Company will interview all interested displaced Solid Waste employees that previously worked in the City for prior Solid Waste contractor, and will make offers of employment to all employees meeting Company standards.

## **3.10 Transportation, Disposal and Processing**

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Sites shall be the Puente Hills Landfill, Sunshine Canyon Landfill and Chiquita Canyon Landfill, and the approved waste-to-energy facility shall be the Commerce Refuse-to-Energy Facility (primary) or the Southeast Resource Recovery Facility (back-up). The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The 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 the City designates. In the event that City selects a Disposal Site or other Facility, the 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 the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the 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 the 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 the 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 the 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 the City for an exception on a case-by-case basis.

### **3.13 Annual Route Audit**

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual 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 the City. The annual 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 (Refuse, 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, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted to the Public Works Director and one to the 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 annual 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 the Company’s plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

### **3.14 Service Exceptions; Hazardous Waste Notifications**

**A. Failure to Collect.** When Solid Waste is not Collected from any Customer, the 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.** The 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. The 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 the City. In addition to other required notifications, if the 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, the Company will immediately notify the Public Works Director or the Public Works Director's designee.

C. **Hazardous Waste Diversion Records.** The 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**

The Company shall maintain a Hazardous Waste Management Plan and make it available to the City upon request.

### **3.16 Facility Capacity Guarantee**

Company guarantees capacity for all Solid Waste to be Collected under this Agreement for the Agreement term at its sister company Community Recycling and Resource Recovery's ("CRRR") Sun Valley transfer station, MRF, organics Facility, C&D Facility and Lamont composting Facility Facilities for the term of this Agreement. CRRR and Company have the same owner and Company has a processing agreement with CRRR.

**ARTICLE 4**  
**OTHER SERVICES**

**4.1 Services and Customer Billing**

**4.1.1 Company Billing**

Company shall bill for the services in subsections A and B below.

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

**B. Rolloff Box and Temporary Bin Services.** In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the 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 (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the 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).

**4.1.2 City Billing**

City shall perform all billing under this contract, other than Rolloff 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 the 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 4.1.4 below).

#### **4.1.4 Company Responsible for Service Level Accuracy**

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

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

#### **4.1.5 Review of Billings**

The Company shall review Billings to customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of said Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The 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 the 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**

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% 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 permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

##### **B. Time and Method of Payment**

Company shall remit the Franchise Fee payments on or before the thirtieth (30<sup>th</sup>) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30<sup>th</sup>) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the 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 the 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. The 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. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the 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, the Company shall Collect the Refuse, Recyclable Materials, and/or Green 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 that 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 the City monthly.

### **4.2.3 Complaint Documentation**

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said 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 the 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 (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the 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 the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the 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 the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

#### **4.2.5 Government Liaison**

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

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, Environmental Task Force meetings, 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 "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. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

#### **4.2.7 Customer Service Liaison**

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

#### **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 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, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods



acceptable to the City. Any outreach material utilizing paper, provided and distributed by the 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 approval by the City prior to the Effective 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 the 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 the 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 mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** - At least 30 days prior to August 1, 2011, 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 an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company 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 or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract 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 the City's request and with City's review and approval of the materials. Notices will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company's responsibility.
- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer's bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the 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.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the 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 the new 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, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

#### **4.3.4 Zero Waste Community Events**

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the 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 the City. This name is the exclusive property of the 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. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the 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 logo and shall become the property of the City upon distribution. City 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, refuse/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 by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager 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; 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 865 hours of Company staff, or third-party contractor, time the first year, and 220 each subsequent year, towards meeting Multi-Family outreach efforts as described in this section.

#### **4.3.7 Commercial Outreach Recognition Program**

Company commits a minimum of 300 hours of Company staff, or third-party contractor, time per year towards meeting Commercial outreach efforts as described in this section.

#### **Green Business Certification Recognition**

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize "green" businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to 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 in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

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

#### 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 business' 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 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 to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;
- Conduct a minimum of one assembly promoting recycling at each school in the 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 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 and participate in school assemblies or City Council meetings for award;
- Free compost for school district gardens (see Section 3.3.6);
- 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 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 270 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.

#### **4.3.9 Recycling Facility Tours**

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

#### **4.3.10 Take-Back Programs**

Company will work with local businesses through the Chamber of Commerce to identify take-back and Recycling opportunities.

#### **4.3.11 Construction Waste Disposal Assistance**

Company provides assistance with LEED project requirements for contractors requesting Construction and Demolition Waste services.

#### **4.4 Waste Generation/Characterization Studies**

Annually, Company will perform a waste stream analysis to identify all components of the Residential and Commercial waste streams in order to help direct education and outreach efforts to increase participation in all Recycling programs.

Additionally, 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, but not more than once every two years, as City may request assistance above and beyond that provided by Company annually.



**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 the 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.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

**5.2 Initial Rates**

The Company Compensation from the start of service under this Agreement through June 30, 2013 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the 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, 2013, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The 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 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. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

## **5.4 Method of Adjustments**

### **5.4.1 General**

For Rate Years beginning July 1, 2013, 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.

### **5.4.2 Cost Components for Rate Adjustment Indices**

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor (1)</u>
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	26%	38%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	5%	21%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	26%	7%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste/ Organics	12%	N/A	Actual change in average per ton tipping fee paid by Contractor for Contractor's Disposal of tonnage Collected under this Agreement, weighted based upon the number of tons Disposed at each landfill, capped at the dollar change in the Disposal gate rate per ton at Puente Hills Landfill (Puente Hills Transfer Station, after landfill closure) (2)(3)
Transformation	7%	N/A	Actual change in the per ton gate rate at the Commerce Waste-to-Energy facility
All Other	24%	34%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

(2) Average Disposal Cost Per Ton - For the July 1, 2013 rate adjustment request, the "Old Index" shall be the average gate rate for the period from June 1, 2011 to December 31, 2011.

For subsequent adjustments, the "New Index" under Column B in Example Adjustments in Exhibits 4A and 4B shall be the average gate rate per Disposed ton paid by Company for City residue for the calendar year ended December 31 prior to the rate adjustment request. The "Old Index" under Column A shall be the "New Index" from the prior rate adjustment. Company must submit to the City its disposal tonnage by facility and gate rate for the relevant periods for each rate adjustment request.

(3) Cap On Disposal Increase - In the event that the dollar (not percentage) increase in Company's average tipping fee exceeds that year's dollar increase at the Puente Hills Landfill/MRF, the additional increase in excess of the cap will roll forward to subsequent adjustments only to the extent that the increase does not exceed this dollar increase cap in any year.

### 5.4.3 Rate Adjustment Steps

#### Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One – Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two – The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 above, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates.

Step Three – Multiply the total weighted percent change from Step Two by the existing Customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Four – Recalculate weightings for the following year based upon these changes.

#### Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

## 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. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of 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 Disposal component adjustments granted under Section 5.3.

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 the 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. 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

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the 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 (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the 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 the 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. The Company may submit other relevant performance information and reports for consideration. The City may request the 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 the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

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

## **6.2 Performance Satisfaction Survey**

If requested by the 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 (10%) of the Residential Customers and ten percent (10%) 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 the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.



## ARTICLE 7

### RECORDS, REPORTS AND INFORMATION REQUIREMENTS

#### 7.1 General

The 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, the 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 the City, 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 the City, the records and reports to be maintained and provided by the 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

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said 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 the City shall be segregated from other areas served by the Company.

#### **7.2.3 Solid Waste Service Records**

Records shall be maintained by the Company for the 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 pick ups;
- f) Number of Refuse, Recycling, and Green 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**

The 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, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The 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 (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the 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, and verification of Diversion rate. The first audit will be based on the Company's reports and records for Fiscal Year 2012 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). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

#### **7.2.7 Payments and Refunds**

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the 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, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to 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.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The 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 twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the 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 the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) 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 the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of 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.

### **7.3.3 Quarterly Reports**

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 the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling 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, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.
- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated

companies, and of other entities that may perform services under this Agreement, as the 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.

### **7.3.5 Financial Report**

The City may, at the City's option, request the 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 the 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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

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

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

#### **7.4 Adverse Information**

**A. Reporting Adverse Information.** The Company shall provide the 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 the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the 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 the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

**B. Failure to Report.** The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

#### **7.5 Right to Inspect Records**

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the 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

The Company hereby agrees to and shall indemnify and hold harmless the 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 the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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 the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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 the 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 the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the 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.

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

## **8.2 Hazardous Substances Indemnification**

The Company shall defend with counsel reasonably acceptable to the 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 the Company, its officers, directors, employees, companies 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 the 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 the 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 the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

### 8.3 AB 939 Indemnification

The Company shall indemnify and hold harmless the 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 the City with respect to the waste stream Collected under this Agreement. Company's indemnification of the City is subject to all of the following restrictions:

- a. The Company's obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the 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 the company's obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company's breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the 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**

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

**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: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) 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 project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$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 One Million Dollars (\$1,000,000) per accident.

**C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the 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) The 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 the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
- b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the 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 the 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.

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 the Company for the City.
3. **All Coverages** - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the 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 Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

**F. Verification of Coverage.** The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. 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 the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

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

**G. Companies and Subcontractors.** The 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 (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the 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 (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the 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 the 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 the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the 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 one hundred (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, the 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.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the 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 the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

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

#### **8.5 Performance Bond**

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty 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 the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

#### **8.6 Forfeiture of Performance Bond**

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

#### **8.7 Performance Bond 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, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (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 bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

#### **8.8 Property Damage**

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

## 8.9 Pavement Damage

Company shall be responsible for 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 the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the 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 the Company; and/or (2) to take possession of any or all of the 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 the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the 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 said property in operational condition.

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

The 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, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

## **9.2 Billing and Compensation to the City During the City's Possession**

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the 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 the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

## **9.3 City's Right to Relinquish Possession**

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

#### **9.4 City's Possession Not A Taking**

Except as otherwise expressly provided in the previous paragraph, the 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 the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

#### **9.5 Duration of the City's Possession**

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the 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 the Company.

## ARTICLE 10

### DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

#### 10.1 Events of Default

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

- A. **Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. **Insolvency or Bankruptcy.** If the 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 the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the 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 the Company is entered.
- E. **Failure to Perform.** If the 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 (2) consecutive days or more, unless excused per Section 10.5.
- F. **Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) 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 the 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 Environmental 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 the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the 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 the City by the 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 the Company, including without limits its equipment, maintenance or office facilities, or any part thereof.

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

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the 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 the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract 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 the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

## **10.3 Right to Terminate Upon Default**

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the 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 the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.



#### 10.4 Liquidated Damages

**A. General.** The City finds, and the 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 the City as a result of a breach by the 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 the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) 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 the City and that the City has considered and relied on the 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the 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 the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, 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 the 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



- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:
 

\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) 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 (10) such failures annually:
 

\$150.00
- f) For each failure to deliver a Rolloff 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 (1) business day, and for each additional day in which the complaint is not addressed:
 

\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:
 

\$250.00
- c) For each failure to notify City within one (1) 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 thirty (30) days from the date submitted to Company.
 

\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.
 

\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversion Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 per Cart
- b) For every ton of diversion Company falls below the minimum necessary to meet the 70% diversion requirement per Section 3.8.1, beginning with the first full calendar year 2012, and including any partial calendar year at the end of the term: \$25 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/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 (1) day prior to

new service provider servicing Customers with access issues, as described in  
Section 11.8: \$1,000/day

The 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, the City shall give the Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. The Company may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/non-performance. The Company may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. The 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 the 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.** The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

D. **Timing of Payment.** The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the 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.

## 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 the Company's employees or directed at the 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 the 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 the City within ninety (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 the City's satisfaction. 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 Public Works Director sixty (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 (2) 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 the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company is excused from performing its obligations hereunder for any of the causes listed in this section for a period of thirty (30) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

### **10.6 Assurance of Performance**

The City may, at its option and in addition to all other remedies it may have, demand from the Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require. If the Company fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the 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 the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the 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. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

#### 11.2 Compliance with Law

In providing the services required under this Agreement, the 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. The 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 10 (the 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 the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) 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 the Company; (iv) 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the 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 (2) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

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

- a) Company shall pay City its reasonable expenses for attorney's and/or 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 and Company shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.
- b) The Company shall pay a transfer fee to the City equal to 1% 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. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) 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 proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Company's operations.
- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by the Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal or local Environmental Laws and that the assignee has provided the 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

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

#### **11.6 Contracting or Subcontracting**

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the 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, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the 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 covenant and/or other equitable relief necessary to enforce this covenant.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. 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 cooperation 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 The Company's Investigation**

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

**11.12 Condemnation**

The City fully reserves the rights to acquire the 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.

**11.13 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 the 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 the Company: General Manager  
Crown Disposal Co., Inc.  
9189 De Garmo Ave.  
Sun Valley, CA 91352

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.

#### **11.14 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the 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. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

The Company shall, by the effective date, designate in writing a responsible officer who shall serve as the representative of the Company in all matters related to the Agreement and shall inform the City in writing of such designation and of any limitations upon his or her authority to bind the Company. The City may rely upon action taken by such

designated representative as actions of the Company unless they are outside the scope of the authority delegated to him/her by the Company as communicated to the City.

#### **11.15 City Free to Negotiate with Third Parties**

Notwithstanding the exclusive nature of the Franchise, the 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, the City may solicit proposals from the 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 under Section 10 of this Agreement.

#### **11.16 Compliance with Municipal Code**

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

#### **11.17 Privacy**

The 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 the 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.

**11.18 Compliance with Immigration Laws.**

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

**11.19 Proprietary Information, Public Records**

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

**11.20 Section Deleted**

**11.21 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 to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.



## ARTICLE 12

### MISCELLANEOUS AGREEMENTS

#### 12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

#### 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 and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

#### 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 Agreement

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

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

CITY OF MANHATTAN BEACH

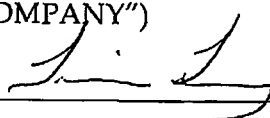
("City")

ATTEST: \_\_\_\_\_  
CITY CLERK

By: \_\_\_\_\_  
CITY OF MANHATTAN BEACH

APPROVED AS TO FORM:

\_\_\_\_\_  
CROWN DISPOSAL COMPANY, INC.  
("COMPANY")

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

\_\_\_\_\_  
City Attorney

Name: Timothy Fry

Title: General Manager

**EXHIBIT 1**  
**COMPANY PROPOSAL**

*January 19, 2011*

*City of Manhattan Beach/Crown*

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

**EXHIBIT 3**  
**MAXIMUM INITIAL COMPANY COMPENSATION**

Residential Monthly Rates (through June 30, 2013)

<b>Volume-Based Automated Three-Cart Collection Service for Single Unit Homes</b>	<b>Monthly Rate</b>		
	Standard Service	Extra Refuse Cart	Backyard Service Surcharge (2)
96-gallon refuse <sup>(1)</sup>	\$ 14.55	\$ 8.00	\$ 6.00
64-gallon refuse <sup>(1)</sup>	\$ 10.55	\$ 6.00	\$ 6.00
35-gallon refuse <sup>(1)</sup>	\$ 6.55	\$ 4.00	\$ 6.00

<b>Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units</b>	<b>Monthly Rate Per Building</b>	
	Standard Service	Backyard Service Surcharge (2)
2 Dwelling Units	\$ 21.10	\$ 12.00
3 Dwelling Units	\$ 31.65	\$ 18.00
4 Dwelling Units	\$ 42.20	\$ 24.00
5 Dwelling Units	\$ 52.75	\$ 30.00
6 Dwelling Units	\$ 63.30	\$ 36.00
7 Dwelling Units	\$ 73.85	\$ 42.00
8 Dwelling Units	\$ 84.40	\$ 48.00
9 Dwelling Units	\$ 94.95	\$ 54.00

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

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

**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(through June 30, 2013)**  
**Commercial Bin Rates**

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 20.00	\$ 38.00	\$ 56.00	\$ 74.00	\$ 92.00	\$ 110.00	\$ 128.00	\$ 3.50
32-Gallon Cart	\$ 20.00	\$ 38.00	\$ 56.00	\$ 74.00	\$ 92.00	\$ 110.00	\$ 128.00	\$ 3.50
64-Gallon Cart	\$ 40.00	\$ 76.00	\$ 112.00	\$ 148.00	\$ 184.00	\$ 220.00	\$ 256.00	\$ 7.00
96-Gallon Cart	\$ 60.00	\$ 114.00	\$ 168.00	\$ 222.00	\$ 276.00	\$ 330.00	\$ 384.00	\$ 10.00
2 Cubic Yard	\$ 72.00	\$ 105.11	\$ 145.00	\$ 185.17	\$ 220.19	\$ 290.26	\$ 350.30	\$ 19.35
3 Cubic Yard	\$ 90.01	\$ 133.34	\$ 187.78	\$ 222.22	\$ 266.65	\$ 355.53	\$ 444.42	\$ 29.00
4 Cubic Yard	\$ 107.84	\$ 161.75	\$ 215.67	\$ 269.59	\$ 323.51	\$ 431.35	\$ 539.19	\$ 38.69
6 Cubic Yard	\$ 136.63	\$ 207.94	\$ 277.27	\$ 346.59	\$ 415.92	\$ 554.56	\$ 693.18	\$ 58.01
2 Cubic Yard Compactor	\$ 119.65	\$ 179.40	\$ 239.19	\$ 302.17	\$ 358.81	\$ 478.45	\$ 598.19	\$ 33.04
3 Cubic Yard Compactor	\$ 152.57	\$ 228.86	\$ 307.28	\$ 381.40	\$ 457.58	\$ 610.13	\$ 762.69	\$ 49.15
4 Cubic Yard Compactor	\$ 185.72	\$ 278.53	\$ 371.39	\$ 464.18	\$ 557.09	\$ 742.74	\$ 928.55	\$ 66.64
6 Cubic Yard Compactor	\$ 239.62	\$ 359.42	\$ 479.25	\$ 599.03	\$ 718.83	\$ 958.45	\$ 1,198.07	\$ 100.27
3 Cubic Yard Split Bin (1)	\$ 68.00	\$ 95.11	\$ 135.00	\$ 175.17	\$ 210.19	\$ 280.26	\$ 340.30	\$ 19.35
4 Cubic Yard Split Bin (1)	\$ 72.00	\$ 105.11	\$ 145.00	\$ 185.17	\$ 220.19	\$ 290.26	\$ 350.30	\$ 29.00

(1) Assumes half of capacity is for refuse and half for recyclable material.

**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(through June 30, 2013)**

**Rolloff Box Rates**

<b>Rate Per Pull, Excluding Disposal</b>	
Standard Box, Any Size	\$ 140.00 per pull
Compactor Box, Any Size	\$ 178.00 per pull
<b>Rolloff Per Ton Charges</b>	
Refuse Disposal	\$ 39.75 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 36.00 per ton
<b>Additional Container Rental - (for boxes emptied less than 3x/ month)</b>	
Standard Box, Any Size	\$ - per week
Compactor Box, Any Size	\$ 25.00 per week

**Optional C&D Rates**

<b>Rate Per Pull, Excluding Disposal</b>	
25-40 cubic yard roll-off box	\$ 140.00 per pull
Low Boy (10 cubic yard) roll-off box	\$ 140.00 per pull
<b>Rolloff Per Ton Charges</b>	
Mixed Loads of C&D Debris	\$ 39.75 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
<b>Temporary Bin Service</b>	
First Dump, including delivery and disposal	\$ 75.00 per dump
Additional dumps, including disposal	\$ 75.00 per dump

**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(through June 30, 2013)**

**Temporary Bins**

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 66.75	\$ 75.00	\$ 83.25	\$ 99.75
Each Additional Dump	\$ 50.25	\$ 75.00	\$ 99.75	\$ 150.00
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

**Extra Services**

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)



## EXHIBIT 4A

### EXAMPLE CART & BIN RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change in Index (Column B / Column A - 1)
1	Labor	(1)	107.30	109.15	1.7%
2	Fuel	(2)	344.0	159.1	-53.8%
3	Equipment	(3)	118.9	124.3	4.5%
4	Disposal	(5)	\$ 28.00	\$ 30.00	7.1%
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%
6	All Other	(4)	215.8	219.2	1.6%

Step Two: Determine components

Row	Adjustment Factor	Index	D	E	F
			Cost Factor Category Weighted as a % of Component Total (7)	Percent Change in Index (from Column C)	Total Weighted Change (Column D x E)
7	Labor	(1)	28.0%	1.7%	0.4%
8	Fuel	(2)	5.0%	-53.8%	-2.7%
9	Equipment	(3)	28.0%	4.5%	1.2%
10	Disposal	(5)	12.0%	7.1%	0.9%
11	Transformation	(6)	7.0%	14.6%	1.0%
12	All Other	(4)	24.0%	1.6%	0.4%
13	Total		100.0%		1.2%

Step Three: Apply percentage change to rates

Row	Rate Category	Current Contractor Rate (8)	G	H	I	J
			Total Weighted Percent Change (from Column F)	Rate Increase or Decrease (Column G x Column H)	Adjusted Rate (Column G + Column I)	
14	64-gallon Cart Service	\$ 10.56	1.2%	\$ 0.13	\$ 10.68	
15	2 unit Service	\$ 21.10	1.2%	\$ 0.25	\$ 21.35	
16	1 unit backyard surcharge	\$ 12.00	1.2%	\$ 0.14	\$ 12.14	
17	2 unit backyard surcharge	\$ 18.00	1.2%	\$ 0.22	\$ 18.22	
18	Extra bulky item	\$ 21.60	1.2%	\$ 0.26	\$ 21.86	
19	Special Pickup/Cart Ov.	\$ 5.00	1.2%	\$ 0.06	\$ 5.06	
20	Commercial Can	\$ 20.00	1.2%	\$ 0.24	\$ 20.24	
21	3 yd bin, 1xweek	\$ 90.01	1.2%	\$ 1.08	\$ 91.09	
22	3 yd comp., 1xweek	\$ 152.57	1.2%	\$ 1.83	\$ 154.40	
23	3 yd bin, extra pickup	\$ 29.00	1.2%	\$ 0.35	\$ 29.35	

Step Four: Re-weight cost components

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change in Index (Column E)	Change in Cost Component Weightings (Column K x Column L)	Adjusted Cost Component Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	28.0%	1.7%	0.4%	28.4%	28.1%
25	Fuel	(2)	5.0%	-53.8%	-2.7%	2.3%	2.3%
27	Equipment	(3)	28.0%	4.5%	1.2%	27.2%	28.9%
28	Disposal	(5)	12.0%	7.1%	0.9%	12.9%	12.7%
29	Transformation	(6)	7.0%	14.6%	1.0%	8.0%	7.9%
30	All Other	(4)	24.0%	1.6%	0.4%	24.4%	24.1%
31	Total		100.0%			101.2%	100.0%

- (1) Employment Cost Index CU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.  
 (2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.  
 (3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.  
 (4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.  
 (5) Average actual change per ton in disposal costs to contractor, capped at no more than the dollar change in per ton disposal gate rate at the Puente Hills Landfill/MRF.  
 (6) Gate rate at Commerce Waste-to-Energy Facility.  
 (7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.  
 (8) Example rates listed. Adjustment applies to all applicable rate categories.

\* See Exhibit 4C

## EXHIBIT 4B

### EXAMPLE ROLL-OFF BOX RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change in Index ((Column B/ Column A)-1)
1	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/ Ton	(5)	\$ 28.00	\$ 30.00	7.1%

Step Two: Determine components

Row	Adjustment Factor	Index	D	E	F
			Cost Factor Category Weighted as a % of Component Total (6)	Percent Change in Index (from Step One, Column C)	Total Weighted Change (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	38.0%	1.7%	0.6%
9	Fuel	(2)	21.0%	-53.8%	-11.3%
10	Equipment	(3)	7.0%	4.5%	0.3%
11	All Other	(4)	34.0%	1.6%	0.5%
12	Service Component Total		100.0%	n/a	-9.9%
13	Refuse/ Ton	(5)	100.0%	7.1%	7.1%

Step Three: Apply percentage change to rates

Row	Rate Category	Index	G	H	I	J
			Current Customer Rate	Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll-off Box Pull Rate		\$ 140.00	-9.9%	\$ (13.66)	\$ 126.14
15	Compactor Roll-off Box Pull Rate		\$ 178.00	-9.9%	\$ (17.62)	\$ 160.38
16	Refuse/ Ton	(5)	\$ 39.75	7.1%	\$ 2.82	\$ 42.57

Step Four: Re-weight service component cost components

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change in Index (Column E)	Change in Cost Component Weightings (Column K x Column L)	Adjusted Cost Component Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	38.0%	1.7%	0.6%	38.6%	42.8%
18	Fuel	(2)	21.0%	-53.8%	-11.3%	9.7%	10.8%
19	Equipment	(3)	7.0%	4.5%	0.3%	7.3%	8.1%
20	All Other	(4)	34.0%	1.6%	0.5%	34.5%	38.3%
21	Total		100.0%			90.1%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.\*

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.\*

(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.\*

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.\*

(5) Average actual change per ton in disposal costs to contractor, capped at no more than the dollar change in per ton disposal gate rate at the Puente Hills Landfill/MRF. (Same percentage as for cart/bin adjustment)

(6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

\* See Exhibit 4C.

**EXHIBIT 4C**  
**EXAMPLE CALCULATION FOR**  
**AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES**

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and "all other" are calculated using the "average annual change" as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the "Annual" index, which is an average of the calendar year's monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the "all other" cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the "New Index Value" to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the "Old Index Value" in Column A. This would have resulted in a 1.7% increase to the "disposal" and "all other" cost components in Column C.

**Consumer Price Index - All Urban Consumers, U.S. City Average**  
**All items less food and energy, CUUR0000SAOL1E**

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235
<b>Average Annual Change:</b>													<b>1.7%</b>

**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) 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 contract.

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 said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract 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 contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

\_\_\_\_\_  
a \_\_\_\_\_ Corporation

\_\_\_\_\_  
SURETY

By: \_\_\_\_\_  
(PRINCIPAL)

By: \_\_\_\_\_  
(ATTORNEY IN FACT)

(SEAL)

(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 SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations



## EXHIBIT 9

### OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

#### **A. Door-to-Door HHW Collection Program**

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.55 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.55 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2013.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in 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 in for a pickup. Company shall be required to update the 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 the City's "e-book") in public education mailers required under Section 4.3.2.

#### **B. 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 70% 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.

## EXHIBIT 10

### CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the 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
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year

## EXHIBIT 11

### COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The ETF's Solid Waste and Recycling Subcommittee's contract recommendations are as follows:

- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”

**DRAFT**

FRANCHISE

AGREEMENT

BETWEEN

CITY OF MANHATTAN BEACH

AND

USA WASTE OF CALIFORNIA, INC.

DBA WASTE MANAGEMENT OF LOS ANGELES

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

\* \* \*

**January 20, 2011**

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DRAFT

FRANCHISE  
AGREEMENT  
BETWEEN  
CITY OF MANHATTAN BEACH  
AND  
USA WASTE OF CALIFORNIA, INC.  
DBA WASTE MANAGEMENT OF LOS ANGELES  
FOR  
INTEGRATED SOLID WASTE  
MANAGEMENT SERVICES

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## RECITALS

This Franchise Agreement (Agreement) is entered into this \_\_ day of \_\_\_\_\_, 2011, by and between the City of Manhattan Beach (City) and USA Waste of California, Inc. dba Waste Management of Los Angeles (Company).

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (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, the City is required pursuant to the AB 939 and SB 1016 to meet minimum diversion goals; and,

WHEREAS, the 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 the City's natural beauty and ocean safety; and,

WHEREAS, pursuant to California Public Resources Code Section 40059(a)(2), the 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, 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, the Company agrees to and acknowledges that it shall properly dispose of all Solid Waste Collected in the City pursuant to this Agreement; and,

WHEREAS, the City and the 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 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

"AB 939" 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 the Company by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" the Company and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which the Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in the 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 the 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 (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

#### **1.4 Agreement**

"Agreement" means this Franchise Agreement between the City and the 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.

#### **1.5 Bagster® Bag**

"Bagster® Bag" means a soft-sided polypropylene Container that can hold up to 3,000 pounds of Solid Waste, is purchased by the Customer at a local hardware or home supply store, and is Collected by Company using a special vehicle with an overhead crane.

#### **1.6 Bagster® Service**

"Bagster® Service" means a method for Residential or Commercial and Industrial Customers to arrange for Collection of Solid Waste as an alternative to temporary Bin or temporary Rolloff Box service, using a Bagster® bag. Company will provide for Collection/processing of the Bagster® bag. Bagster® Service is a Temporary Service. The rate for Bagster® Service shall be a reasonable rate negotiated between the Customer and Company.

#### **1.7 Billings**

"Billings" means any and all statements of charges for services rendered, howsoever made, described or designated by the City or the Company, or made by others for the City or the 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 2 to 6 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 1.25); Residential wastes (including wood waste, tree trunks and large branches if no longer than two (2) feet in diameter, four (4) feet in length and fifty (50) lbs. 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 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.

## **1.11 Can**

“Can” means a Solid Waste receptacle provided to Commercial Customers by the Company, approximately 30- to-35-gallons, serviced by manual Collection.

## **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 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 the City as presently existing or as such boundaries may be modified during the term of this Agreement.

### **1.14 Collect/Collection**

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

### **1.15 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, but excluding businesses conducted upon Residential Property which are permitted under applicable zoning regulations and are not the primary use of the property.

### **1.16 Company**

"Company" means USA Waste of California, Inc. dba Waste Management of Los Angeles, a Delaware corporation and its officers, directors, employees, agents, companies and subcontractors.

### **1.17 Company Compensation**

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

### **1.18 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.

**1.19 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 3.3.5.

**1.20 Construction and Demolition Waste**

"Construction and Demolition Waste" means used or discarded construction materials removed from a Premise during the construction or demolition of a structure.

**1.21 Containers**

"Containers" means any and all types of Solid Waste receptacles, including Carts, Compactors, Bins, Cans and Rolloff Boxes.

**1.22 CPI**

“CPI” means the Consumer Price Index for All Urban Consumers (CUUR0000SAOL1E), all items less food and energy index – U.S. city average.

**1.23 Customer**

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

**1.24 Disposal**

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

**1.25 Disposal Site(s)**

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

**1.26 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."

### **1.27 Environmental Laws**

"Environmental Laws" means all federal and State statutes, county, local and the 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.

### **1.28 Facility**

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

### **1.29 Franchise**

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

### **1.30 Food Waste**

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste pilot programs included in Sections 3.2.7 and 3.2.8, which 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); and,

- Tea bags, coffee grounds and filters.

### **1.31 Green Waste**

"Green Waste" means leaves, grass, weeds, and wood materials from trees and shrubs (including holiday trees, but otherwise not more than four (4) inches in diameter or four (4) feet in length) and similar materials generated at the Premises.

### **1.32 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.

### **1.33 Hazardous Waste**

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

**1.34 Household Hazardous Waste (HHW)**

"Household Hazardous Waste" means Hazardous Waste generated at Residential Property.

**1.35 Materials Recovery Facility**

"Materials Recovery Facility" 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.

**1.36 Mixed Waste Processing**

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

**1.37 Multi-Family**

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

**1.38 Section Deleted**

**1.39 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.

**1.40 Permanent Rolloff Box Service**

"Permanent Rolloff Box Service" means the Collection of Solid Waste generated from ongoing operations at a Customer's place of business using Rolloff 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 Rolloff Box service used for



occasional higher volumes of waste due to special clean-up or other projects, or on construction or demolition sites.

**1.41 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.

**1.42 Premises**

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

**1.43 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.

**1.44 Rate Year**

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

**1.45 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.

**1.46 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 Refuse.

**1.47 Refuse**

"Refuse" means Putrescible and non-Putrescible Solid Waste or debris, except sewage, whether combustible or non-combustible.

**1.48 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.

**1.49 Rolloff Box**

"Rolloff Box" means an open-top metal Container or closed compactor boxes serviced by a rolloff truck with a capacity of 10 to 50 cubic yards.

**1.50 Sand Section**

"Sand Section" means approximately one third of the City which runs along the coast and received Residential Collection services manually prior to this Agreement. The Sand Section is to receive automated Collection at the start of service under this Agreement.

**1.51 Single-Family**

"Single-Family" means pertaining to any Residential Property with only one dwelling unit.

**1.52 Solid Waste**

"Solid Waste" means all Putrescible and non-Putrescible Refuse, Recyclable Material, and Green Waste, and as otherwise defined in Public Resources Code §40191. Any material that a Customer pays to be hauled away shall be defined to be Solid Waste and not a Recyclable Material.

**1.54 State**

"State" means the State of California.

#### **1.54 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 Rolloff Box or Bin. Regular Collection of Solid Waste generated by a business’ ongoing operations is not included.

#### **1.55 Transformation**

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

#### **1.56 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), section 66261.9: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR section 66273.4; (iii) lamps as described in 22 ccr section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR section 66273.6.

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

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

#### 2.2 Administrative Fee

The Company shall pay to the City an Administrative Fee in a one-time lump sum payment equal to One Hundred Twenty Thousand dollars (\$120,000) within seven days of execution of this Agreement to reimburse the 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 the Company under this Agreement shall be exclusive to the Company. The 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 the Company.

The City shall protect the Company's exclusive rights by proper ordinances. Should the City be required to take administrative, or other legal action against any Person that infringes on the Company's exclusive rights, the Company shall reimburse the 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 \_\_\_\_\_ ("effective date").

## **2.5 Term of Agreement**

The term of this Agreement shall commence on June 1, 2011, and expire on June 30th, 2018, with a twenty-four (24) month extension permitted at the City's option. The City may, upon 90-day advance written notice to Company prior to Agreement expiration, exercise the extension option. The Agreement will automatically renew monthly, up to twenty-four (24) months unless City gives Company a 30-day written notice of termination.

## **2.6 Conditions to Effectiveness of Agreement**

The obligation of the 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 the City.

- a) **Accuracy of Representations.** Representations and warranties made by the 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 the Company or the execution of this Agreement or seeking to restrain or enjoin its performance.
- c) **Furnishing of Insurance and Bonds.** The Company has furnished evidence of the insurance and bonds required by Article 8.
- d) **Effectiveness of the City Council Action.** The City's Resolution approving this Agreement shall have become effective pursuant to California law prior to the effective date of this Agreement.

## **2.7 Proposition 218**

This Agreement is contingent upon approval of any refuse pick-up rate increase imposed herein by the Manhattan Beach City Council pursuant to the provisions of

Article XIID of the California Constitution. 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 thirty 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 the City in furtherance of this Agreement, City shall have the option to terminate this Agreement with thirty 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.

## **2.8 Delegation of Authority**

The administration of this Agreement by the City shall be under the supervision and direction of the Public Works Department, and the actions specified in this Agreement, unless otherwise stated, shall be taken by Public Works Director or the Director's designee.

## **2.9 Limitations on Scope of Franchise**

The Franchise granted to the 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 the City that is otherwise required by law:

- a) Recyclable Materials source separated from Solid Waste by the Customer and for which Customer sells or is otherwise compensated by other Persons in a manner resulting in a net payment to the Customer;

- b) All Temporary Rolloff Box service;
- c) Temporary Bin service for the Collection of Construction and Demolition Waste;
- d) Section Deleted;
- 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 said licensed company or by the 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) Recyclable Materials and Green Waste which are source separated at any Premises by the Customer and donated to youth, civic, or charitable organizations;
- h) Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Section 14500, et. seq., California Public Resources Code;
- i) 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;
- j) Animal waste and remains from slaughterhouse or butcher shops for use as tallow;
- k) By-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- l) Collection services related to take-back programs in which manufacturers or retail establishments accept extended responsibility for Recycling goods produced or sold;
- m) Collection using Customer-provided Containers for one-time accumulation of material, and removal of Container for Disposal/processing. This exclusion is intended to include programs providing alternative methods of temporary Collection service that exclude the use of Bins, such as Company's Bagster®

program as defined in Sections 1.5 and 1.6. This exclusion is not intended to permit an alternative to permanent Refuse Collection service;

- n) Hazardous Waste, medical waste, and radioactive waste, regardless of its source; and,
- o) The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by the City through the City officers or employees.

The Company acknowledges and agrees that the City may permit other Persons besides the Company to Collect any or all types of the Solid Waste listed in this Section 2.9 without seeking or obtaining approval of the 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, "niche" Recycling services, and Hazardous Household Waste pickups.

This grant to the 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 the City to lawfully provide for the scope of Franchise services as specifically set forth herein, the 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 the City shall not be responsible for any lost profits claimed by the 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 the 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**

The City may direct the 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 the City may direct. The 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**

The Company shall present, within 30 days of a request to do so by the 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**

The Company acknowledges and agrees that the City may permit other Persons besides the Company to provide additional Solid Waste services not otherwise contemplated under this Agreement. If pursuant to Section 2.10.2, the Company and the City cannot agree on terms and conditions of such additional or expanded diversion services within

ninety (90) days from the date when the City first requests a proposal from the Company to perform such services, the Company acknowledges and agrees that the City may permit Persons other than the 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 the Company by operation of this Agreement. Subject to the Company's objective to meet the source reduction and Recycling goals which apply to the City and the 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 the City exercises such right by providing specific written direction to the Company, the 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 the Company. Subject to the provisions of this Agreement, the 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 the Company. The 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 the City has such ownership or possession unless such written notice has been given to the Company.

### **2.12 Company Status**

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

### **2.13 Company Authorization**

The Company has the authority to enter into and perform its obligations under this Agreement. The Board of Directors or partners of the 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 the Company have authority to do so. Company shall authorize one employee for the 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 the Company.

### **2.14 Annexations**

This Agreement extends to any territory annexed to the 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 shall be added to the Franchise area covered by this Agreement. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and the City agrees that it shall cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this paragraph.

### **2.15 Business License**

The company and any subcontractors shall annually obtain a City of Manhattan Beach Business License. No contracts for services provided in the 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 Refuse Collection Services

The work to be done by the 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 the Company of the duty to furnish all others, as may be required, whether enumerated elsewhere in the Agreement or not.

The work to be done by the 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 Refuse Cart Service

Company shall Collect Refuse delivered for Collection by Single-Family Customers and Multi-Family Customers not receiving Bin service not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Company, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Company to relocate the Collection location. City-wide automated Cart service must be implemented by the start of service under this Agreement, including automation of the Sand Section of the City which was Collected manually prior to the start of service under this Agreement.

Company will supply each Residential Refuse Cart Customer with Refuse Carts of 96-64- or 32-gallons, as requested by Customer as described in Sections 3.7.1.1 and 3.7.7. Single Family Customers shall be charged based upon the size and number of Refuse 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. 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.

Company shall replace all Carts (Refuse, Recycling and Green Waste) with lids closed after emptying them.

### **3.1.2 Refuse Cart Overage**

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two annual pickups, taking place on the regular Collection day, per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Company shall instruct Customers to call in for overage pickups. Company shall Collect all Refuse placed for Collection in addition to the foregoing two (2) 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 provide a three-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 Refuse Cart.

Residential Customers may be charged per pickup in accordance with the approved rate schedule in Exhibit 3 for overage pickups above two (2) per year. In addition to the two (2) free pickups, Company shall Collect all additional Refuse 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 Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Section 1.9 and 3.1.5. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

### **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 Refuse 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.

Upon request, Company shall provide split two, three and four cubic yard Bins, which have separate Collection compartments in order to accommodate two waste streams in one Container. Company shall be compensated based upon the level of Refuse services received. For example, a split four yard Bin, with two cubic yards of capacity designated for Refuse and two cubic yards designated for Recyclables will be charged the rate for a two cubic yard Refuse Bin, Collected at the frequency at which the Refuse side is Collected.

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 Temporary Bin Services**

Company shall provide exclusive Temporary Bin Service to all Customers requesting such service. 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.

### **3.1.3.3 Commercial Cart or Can Service**

Company shall Collect Commercial Refuse placed at the curb in Company-provided 32, 64 or 96-gallon Carts or, if automation of Collection is not feasible, 30-gallon Cans 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.

### **3.1.3.4 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.

### **3.1.3.5 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 Rolloff Box Service**

Company must provide permanent Rolloff 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 Rolloff Boxes. The provision of compaction equipment is outside the scope of this Agreement. Collection from these compactor Rolloff 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 the Company with forty-eight (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 or disposed of 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) Disposal

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, 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 (3) items out for Collection per pick-up.

### **3.1.5.2 Commercial Customers**

Company may charge Commercial Bin, Cart, and Can 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 and Cans 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, 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, 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, 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.

### **3.2 Recycling Services**

#### **3.2.1 Residential Recycling Service**

Company shall provide weekly Recycling Collection to all Residential Cart Customers on the same day as Refuse 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 96-, 64- and 32-gallon Recycling Carts to all Residential Cart Customers, including Sand Section Customers, as described in Sections 3.7.1.1 and 3.7.7. Company shall Collect and remove all Recyclable Materials placed in Recycling Carts for Collection.

At a minimum, Recyclable Material Collected shall include, but not be limited to: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene);

plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

### **3.2.2 Commercial Recycling**

Recyclables Collection at No Additional Charge - The Company agrees to provide, at no additional charge, Recycling Collection service to all Refuse Bin service and Commercial Cart and Can Customers requesting it from the Company. Company may purchase Recyclable Materials from its Customers as well. The Company agrees to provide Recycling Bins or Carts to Bin Refuse Customers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs shall be made available at a minimum for: aluminum cans; glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 - 7 (including polystyrene); plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable); juice boxes and milk cartons (aseptic packaging, Tetra Pak® and waxed cardboard); Scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); corrugated cardboard; and telephone books.

Source separated Recycling provided under this section shall be Collected on a separate route from mixed Refuse, and recovery of Recyclables on these source separated routes are not to be credited toward minimum Recyclables recovery required under Section 3.5 and, if applicable, Exhibit 9, Section B.

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

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. Fifty percent (50%) of the Customers shall be contacted within the first six (6) months, and one hundred percent (100%) of the Customers shall be contacted during the first twelve (12) months. Company will provide a monthly log to the City, 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. 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 (6) months of service, and again at the end of the first twelve (12) month of service, Company will provide City with two (2) lists, one (1) of Multi-Family Bin and Commercial Customers with Company Recycling Containers and one (1) of Multi-Family Bin and Commercial Customers without Company Recycling Containers. Each list shall include Customer names and addresses, contact names and phone numbers, Refuse 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 the 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 the City each six (6) months for the term of the Agreement.

Desk-Side Recycling Containers - Upon Customer request, Company shall provide Commercial Customers with desk-side Recycling Containers in order to facilitate Commercial Recycling Programs. Company may charge requesting Customers at a rate no higher than Company cost for each Container. As of the start of service under this Agreement, Company cost for four-gallon Rehrig-Pacific Containers with diamond cut-outs were approximately \$5.00 per Container.

### 3.2.3 Funding of City Recycling Needs

Company shall provide the City with \$28,000 on August 1, 2011 to conduct annual Commercial waste reduction and Recycling audits, fund Recycling programs or otherwise support the City's Solid Waste goals. This amount shall be increased by \$1,000 annually and remitted to the City on each subsequent July 1<sup>st</sup> as follows:

<u>Payment Date</u>	<u>Payment Amount</u>	<u>Payment Date</u>	<u>Payment Amount</u>
August 1 <sup>st</sup> , 2011	\$28,000	July 1 <sup>st</sup> , 2015	\$32,000
July 1 <sup>st</sup> , 2012	\$29,000	July 1 <sup>st</sup> , 2016	\$33,000
July 1 <sup>st</sup> , 2013	\$30,000	July 1 <sup>st</sup> , 2017	\$34,000
July 1 <sup>st</sup> , 2014	\$31,000	July 1 <sup>st</sup> , 2018*	\$35,000

\* If City exercises option to extend Agreement beyond June 30, 2018, July 1 payments will continue to be increased by \$1,000 per year.

### 3.2.4 Construction and Demolition Waste Recycling

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

- Following the 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 it will be processed for reuse, or, if material has been source separated, it may be taken directly to a construction and demolition materials facility for reuse;
- Inquiring of all Rolloff 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 the City annually to educate them on Construction and Demolition Waste diversion.

### **3.2.5 Marketing and Sale of Recyclable Materials**

The Company shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Company shall retain proceeds from sales of Recyclable Materials, except to the extent that recyclables revenue received from Rolloff Box loads offsets the pull service cost.

### **3.2.6 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 optional door-to-door HHW Collection program. The Company will utilize facilities to process Universal Waste at its cost and in compliance with all existing regulations regarding Universal Waste. The Company will issue warnings to Customers who inappropriately place Universal Waste in Containers for collection of waste, recyclables, or green 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.

### **3.2.7 Residential Food Waste Diversion Pilot Program**

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Residential Cart Customers. Program shall be subject to City approval. Company shall conduct the approved Residential food waste pilot program at no additional cost to City or ratepayers, beginning July 1, 2012 (unless start date is extended by City).

Pilot program shall be conducted for a minimum of six months. Participants shall include one full Residential route for one day each week. Company shall develop, produce and deliver public education materials to all Customers on the participating route. Materials shall be subject to advance City approval.

Company shall collect baseline tonnage data from this route for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of Food Waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Residential food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

### **3.2.8 Commercial Food Waste Diversion Pilot Program**

Company shall submit a proposal to the City by July 1, 2011 detailing a pilot program to Collect Food Waste from Commercial Food Waste generating Customers. Program shall be subject to City approval. Company shall implement a Commercial Food Waste pilot program for a minimum of six months beginning July 1, 2012 (unless start date is extended by City) for 10% of Food Waste generating Commercial Customers in the City at no additional cost to either City, participants or rate payers.

Prior to the start of the pilot program, Company shall meet with all participants to provide management and employee training, the start and end dates, materials to be collected and required Refuse capacity prior to the start of the pilot. Company collect baseline tonnage data from pilot Customers for a 90-day period prior to the start of the pilot program in order to assist in determining the effectiveness of the program. Company shall, at a minimum, report the quantity of food waste recovered by the pilot program. Other information to be collected shall be agreed to between City and Company based upon specifics of the program to be implemented. Company shall provide this data to City on a monthly basis within 30 days of the end of each month.

If City instructs Company to implement a Commercial food waste program City-wide at any time during the Agreement term (after completion of the pilot program), Company shall receive an adjustment to Company Compensation in accordance with Section 2.10 of the Agreement.

### **3.3 Green Waste Program**

#### **3.3.1 Residential Green Waste Collection**

Company shall provide weekly Collection of Green Waste on the same day as Refuse and Recycling Collection to all Refuse Cart Customers. Company shall distribute each Residential Cart Customer one 96-, 64- or 32-gallon Green Waste Cart in accordance with Sections 3.7.1.1 and 3.7.7. Company shall make available one or more additional Green Waste Carts to Customers that regularly separate more Green Waste than will fit in their current Cart(s). Green Waste Services and additional Green Waste Carts shall be provided at no additional charge.

Company shall Collect an unlimited amount of tied bundles of Green Waste. Green Waste bundles are limited to the Manhattan Beach City Code 5.24.010(E) size restrictions of bundles a maximum of forty-eight (48) inches long and eighteen (18) inches in diameter, and bundled weight limit of fifty (50) lbs.

Florists and nurseries will be entitled to Residential-style Green Waste Cart service in accordance with the approved rate schedule. (This service does not include the Collection of Green Waste bundles at no additional charge.)

#### **3.3.2 Rolloff Box Service**

Company shall make permanent Rolloff Box Green Waste Collection available to all Customers at a rate not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

#### **3.3.3 Holiday Tree Collection Program**

Company shall operate and notify Customers about an annual Holiday Tree Collection and Recycling program. The program shall include both Collection from Single Family and Multi-Family 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 the City in the scheduling and operation of the Holiday Tree Collection program. Trees must be cut into lengths no longer than seven (7) feet. All trees shall be diverted unless they include ornaments, flocking, garlands, and tinsel, and stands.

### **3.3.4 End Uses for Green Waste**

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

### **3.3.5 Compost Bin Distribution**

Company shall purchase composting and worm bins approved by the City and deliver one to each Residential Customer that requests one. Company will bill 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 the Company (excluding delivery or other associated costs) shall be reimbursed to Company by the 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.

## **3.4 Warning Notice**

The Company shall warn Customers who have non-Recyclable Materials in their Recycling Container or contaminated Green Waste in their Green Waste Container. If, after three written warnings in a six-month period, the Container continues to be contaminated, the Company may remove the Recycling or Green Waste Container from Customers who fail to sort properly and segregate Recyclable Materials or Green Waste. Company must leave instructive warning notices on the contaminated Containers, indicating the issue, how to correct it, and that the Container may be removed if behavior is not corrected. The format of the warning notice must be approved by the City. Customer may regain Cart after a six-month period or if there is a change in Customer at the address in question. The Company shall report monthly to the City any warning notices issued.



### **3.5 Commercial Mixed Waste Processing**

Company shall send sufficient tons of Bin Refuse for processing to recover a minimum of 1,365 tons of Recyclables from such processing each calendar year. The annual tonnage requirement shall be pro-rated for August 1 through December 31, 2011. This program shall be conducted at no additional cost to City or rate payers.

### **3.6 City Services**

#### **3.6.1 City Facilities Collection**

Company shall Collect and dispose of all Solid Waste generated and Recyclable Materials and Green Waste accumulated at Premises owned and/or operated by the 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 the Company and the City. Company will provide all Containers required.

#### **3.6.2 City Facilities Hazardous Waste Collection**

Company shall Collect as needed and properly dispose of hazardous waste that is 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 10. 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 10 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 by City at no additional charge.

#### **3.6.4 Street and Park Litter Containers**

Company shall Collect and dispose of material in Refuse Containers, or divert material in Recycling Containers, 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. Additional Recycling Containers may be added by City for Company Collection at no additional charge. The number of street and park litter Refuse Containers to be Collected at no additional charge may be increased by up to 5% during the term for no additional charge. There shall be no rate adjustment for increases in frequency of collections.

#### **3.6.5 City Sponsored and Non-City Sponsored Events**

**City-Sponsored Events** - The Company shall provide Solid Waste and Recycling Collection service at City designated events each year. 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. The Company shall provide these services at no additional cost to the City, the ratepayers, or the event sponsors. Such events include, but are not limited to, those listed in Exhibit 8.

**Non-City Sponsored Events** - Company shall provide service at non-City sponsored events in accordance with the approved rate schedule and shall offer event coordinators waste/recycling boxes at cost. Liners, above the reasonable amount of liners provided to non-City sponsored events for use with the reusable Refuse and Recycling stations as described below, 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.

**Reusable Refuse and Recycling Stations** - Company will provide at no additional cost temporary use of up to 50 reusable Refuse and Recycling stations for events at any one time, to be used at either City or non-City sponsored events. Company may request a reasonable refundable deposit for usage at non-City sponsored events. City will provide a reasonable amount of bags/liners for these stations for non-City sponsored events at no additional cost, with bags/liners above a reasonable amount provided at cost. Bags/liners for stations will be provided for City-sponsored events at no additional cost.

### **3.6.6 Emergency Collection and Disposal Service**

Company will assist City at the City's request for emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, tidal wave/ tsunami, riot or civil disturbance), or as otherwise determined necessary by the City), by providing Collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 3. The rate for this service is to remain fixed for the term of the Agreement.

### **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. Each individual resident may receive up to three containers per year (if multiple residents in one dwelling unit use Sharps, each such resident shall receive up to three containers per year). Each container above three per resident shall cost no more than \$27.50 per container; however, if City implements the door-to-door HHW collection program per Exhibit 9.A, Company shall provide unlimited Sharps containers at no additional charge. Sharps containers shall either be pre-paid mail back containers, or, if the City implements the door-to-door HHW collection program in Exhibit 9, 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 the first day of the start of service under this Agreement.

## **3.7 Containers**

### **3.7.1 Carts**

#### **3.7.1.1 Residential Cart Distribution**

Company shall mail a return postage paid postcard and information describing the new rate structure and Cart options to all Residential Cart Customers (see Section 4.3.2).

Company must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse, Recycling and Green Waste Carts to be delivered. Company shall deliver all new Carts to each Customer.

If a selection is not made, Sand Section Customers will receive one Refuse Cart and one Recycling Cart, each 64-gallons, and other Customers will receive one Refuse Cart, one Recycling Cart and one Green Waste Cart, each 64 gallons.

After initial Cart distribution, 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 (Refuse, Recycling, Green Waste) may be exchanged.

Company shall provide City the number and size of Refuse Cart(s) used by each Customer, at the start of City-wide automation (no later than six weeks prior to the start of new services to allow City sufficient time to update its Billing system) and as changes are made throughout the Term for Billing purposes.

#### **3.7.1.2 Removal of Existing Containers**

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Company shall remove, and Recycle to the extent possible before Disposing, City-owned Carts and Cans and Customer-provided Cans, if Customer does not intend to retain the Customer-provided Cans. Company shall establish and advertise a system whereby Customers can indicate what Cans 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 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% recycled material and be recyclable.

### **3.7.1.4 Capacity**

The Company shall provide new Carts in three sizes for Residential Refuse, Recycling and Green Waste Collection. Sections 3.1, 3.2 and 3.3's references to Cart sizes of 35, 64, and 96-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:

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

### **3.7.1.5 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.

### **3.7.1.6 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.

#### **3.7.1.7 Cart Colors**

The Refuse, Recycling and Green 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. Refuse Carts will be gray. Recycling Carts will be blue. Green Waste Carts, including Commercial Green Waste Carts, will be green.

#### **3.7.1.8 Cart Labeling**

Company shall label and hot stamp all Carts with information meeting the requirements of this section, and including 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. The City's logo and, if requested by City, the City 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).

**3.7.1.9 Identification Markings**

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

**TRASH, RECYCLING** or **GREENWASTE** 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 Load Capacity**

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.

<b>Cart Size (Gallons)</b>	<b>Minimum Load Capacity (LBS)</b>
<b>90-101</b>	<b>200</b>
<b>60-70</b>	<b>130</b>
<b>30-40</b>	<b>70</b>

**3.7.2.2 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 Contract:

- 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 the City.

#### **3.7.2.3 Chemical Resistant**

Carts shall resist damage from common household or Residential products and chemicals. Carts, also, shall resist damage from human and animal urine and feces.

#### **3.7.2.4 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.



### **3.7.2.5 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.

### **3.7.2.6 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 Can Design and Performance Requirements**

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

#### **3.7.3.1 Capacity**

The Company shall provide Cans for Commercial Refuse when Commercial Customers cannot accommodate a Cart or Bin. References in this Agreement to a Can size of 30-gallons is approximate. Acknowledging the different sizes provided by the various Can manufacturers, the Cans shall be uniform in appearance and must be 30 to 35-gallons in size.

#### **3.7.3.2 Can Handles**

The Can handles will provide comfortable gripping area for carrying the Can.

### **3.7.3.3 Can 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;
- Is easily removed by driver for Collection;
- Permits users of the Container to conveniently and easily open and shut the lid throughout the serviceable life of the Container; and,
- The lid handle shall be an integrally molded part of the lid.

### **3.7.3.4 Can Colors**

The Commercial Refuse and Recycling Cans will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Commercial Trash Cans will be gray. Recycling Cans will be blue.

### **3.7.3.5 Identification Markings**

Commercial Refuse Cans shall be labeled as TRASH or RECYCLING, and shall be marked to identify the Customer's address and days of the week that the Can is to be Collected on the side of the Can. Markings may be made by applying stickers, or another method, provided the method is approved by the City in advance and the character size is no less than one inch and clearly distinguishable.

### **3.7.3.6 Can Load Capacity**

Cans shall have a sufficient load capacity so that the Container will not experience distortion, or damage or loss of any other functions as required herein when fully loaded.

### **3.7.3.7 Can Durability**

Cans 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 Contract:

- 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 Can bodies must remain impervious to any damage, that would interfere with the Can's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

### **3.7.3.8 Chemical Resistant**

Cans shall resist damage from common household or Residential products and chemicals. Cans, also, shall resist damage from human and animal urine and feces.

### **3.7.3.9 Reparability or Replacement**

Minor cracks, holes, and other damages shall be readily repairable by the contractor personnel or else the Can shall be replaced. All repairs must restore the Container to its full functionality to meet the design and performance requirements as set for herein

### **3.7.4 Cart and Can Ownership and Maintenance Responsibilities**

All Carts and Cans that are distributed by Company under this Agreement, shall become and remain the property of the City at the end of the Agreement term. The

Company shall be responsible for Cart and Can repair and maintenance, and replacing lost, stolen or damaged Carts and Cans within three business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within one business day. However, the Company may charge the Customer for repairing or replacing a Cart or Can if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Company's actual cost for replacement parts or the new Cart or Can.

### **3.7.5 Bins and Compactors**

The 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. The 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. 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 twenty-four (24) hours of request by City or Customers. All Bins and Compactors provided by Company shall remain the property of Company.

Each Container placed in the City by the Company shall have the name and phone number of the 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. The 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 the City. Company shall repaint Bins upon the City's request.

### **3.7.6 Rolloff Boxes**

The Company shall provide clean Rolloff Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of the 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. The Company shall properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

### **3.7.7 Option to Use Existing Carts**

City has the sole option to permit Company to continue using Carts and Cans in place at the start of service under this Agreement for businesses and for Residential Customers receiving automated service under the previous Collection agreement. Residents in the Sand Section will receive new Carts when service in this area is automated at the start of service under this Agreement. City will notify Company upon award of this Agreement whether Company may continue to use the Carts and Cans already in distribution, subject to all on-going maintenance and replacement requirements under this Agreement. Exhibit 3-1 includes alternative Residential Cart rates to be applied if this option is permitted. All other rates will remain the same.

## **3.8 Diversion Requirements**

### **3.8.1 Hauler Diversion Requirements**

The minimum amount of tonnage that shall be diverted by Company through Recycling, Green Waste Collection, Mixed Waste Processing, and Transformation of the waste Collected by Company under this Agreement during each year of this Agreement is as follows:

<u>Calendar Year</u>	<u>Diversion Rate</u>
Remainder of 2011	50%
2012	50%
2013	51%
2014	52%
2015	53%
2016	54%
2017	55%
2018, full or partial year as applicable	55%
2019, full or partial year, if applicable	55%

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 the 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 City-wide Diversion Rate**

Should the City not significantly exceed the City-wide AB 939 diversion minimum for its entire waste stream, and if the City determines that the Company has not maximized diversion from the services and programs contemplated under this Agreement, the Company agrees to undertake its best reasonable efforts to implement programs and provide equipment necessary in order for the City to significantly exceed the State requirement. Additional services required by the 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. Site and route-specific exemptions may be made to this limitation by City's Director of Public Works. 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.

The 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 the City once annually upon 30-day written notice requesting said 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 the City, the Company shall revise its plan incorporating any changes into a revised plan and review said revised plan with the City within thirty (30) calendar days.

### **3.9.2 Vehicles**

**A. General.** The 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. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be done so at the Company's sole expense. The 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 the City that are more than ten (10) 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 SCAQMD and the Air Resource Board's regulations. No rate adjustments shall be made for such changes in law. All vehicles used by the 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 such changes in law.

**C. Vehicle Identification.** The Company's name, local telephone number, and a unique vehicle identification number designed by the Company for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Company shall not place the City's name and/or any City logos on the Company vehicles. Vehicles shall all be painted in a standard color.

**D. Cleaning and Maintenance**

- 1) The 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. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.
- 3) The Company shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three years.
- 4) The 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. The Company shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's



specifications and schedule. The 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 the City upon request.

- 5) The 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. The 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 the City, the Company shall furnish the 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. The 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 twenty-five (25) feet from the vehicle, five (5) feet from the ground. Company shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Company shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) Subject to Section 8.1, the Company shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the 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 the City to monitor route vehicle activity through this system by computer at the City through read-only access. Company shall provide activity reports upon request. With this service, Company shall ensure that the City has access to the online system to pull up GPS data from trucks at any time during the day.

**F. City Inspection Per Code.** The 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. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with, and its return to service has been approved by, the City.

**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 the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

**H. Correction of Defects.** Following any inspection, the Public Works Director shall have the right to cause the 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.

### **3.9.3 Litter Abatement**

**A. Minimization of Spills.** The 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, the Company shall promptly clean up all such materials. Company shall notify City within 30 minutes of 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.

The 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 the City.

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

#### **3.9.4 Personnel**

The 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.

The Company also agrees to establish and vigorously enforce an educational program that will train the Company's employees in the identification of Hazardous Waste. The 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.

The 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. The 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, the Company shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the Company will consider reassigning the employee to duties not entailing contact with the public while the Company is pursuing its investigation and corrective action process.

The 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.

### **3.9.5 Identification Required**

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

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

### **3.9.6 Fees and Gratuities**

The 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**

The 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**

The Company shall notify the City forty-five (45) days prior to, and Residential Customers not later than fourteen (14) days prior to, any change in Collection operations which results in a change in the day on which Residential Solid Waste Collection occurs. The Company will not permit any Customer to go more than seven (7) days without service in connection with a Collection schedule change. The 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 the City. The 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**

The 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. The Company shall deliver the address or description to the City within five (5) working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Manhattan Beach City Code, health codes or other laws.

### **3.9.10 Waste Watch Program**

Company drivers shall be trained to report unusual or suspicious situations that the drivers may see on route to the appropriate emergency responder.

## **3.10 Transportation, Disposal and Processing**

The Company shall transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless the City otherwise obtains ownership of the Solid Waste or Refuse stream as described in Section 2.11, the primary Disposal Site shall be the El Sobrante Landfill [via Company's Carson Transfer Station] and the approved waste-to-energy facility shall be the Southeast Resource Recovery Facility ("SERRF"). The Company agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

The Company shall maintain complete, accurate and up-to-date records of the quantities of Solid Waste transported to the transfer station, MRF, Transformation Facility or Disposal Site and will cooperate with the City in any audits or investigations of such quantities.

The 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 the City designates. In the event that City selects a Disposal Site or other Facility, the 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 the Company to meet either or both of the requirements of Section 3.8 and/or Section 8.3, the 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 the 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 the 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 the 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 the City for an exception on a case-by-case basis.

### 3.13 Annual Route Audit

Once during the first year and every third year thereafter, the Company shall conduct an audit of its Collection routes in the City. The annual 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 the City. The annual 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 (Refuse, 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, the Company shall submit to the City a report summarizing the results of the annual audit. One copy shall be submitted

to the Public Works Director and one to the 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 annual 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 the Company's plans to resolve the exceptions. The results of the annual audit shall be available for review by the City or its representative.

### **3.14 Service Exceptions; Hazardous Waste Notifications**

**A. Failure to Collect.** When Solid Waste is not Collected from any Customer, the 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.** The 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. The 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 the City. In addition to other required notifications, if the 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, the Company will immediately notify the Public Works Director or the Public Works Director's designee.

**C. Hazardous Waste Diversion Records.** The 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**

The Company shall maintain a Hazardous Waste Management Plan and make it available to the 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: WM Carson Transfer Station, WM South Gate Transfer Station, Sun Valley Recycling Park (Green Waste), Downtown Diversion (C&D); at one or more of the following landfills as needed: El Sobrante Landfill Lancaster Landfill, Antelope Valley Landfill, and Simi Valley Landfill; and at Agromin (Green Waste). After Company's Reclaimable Anaerobic Composter is completed, Company guarantees capacity for the pilot, and potential ongoing, Food Waste programs (Company would use third party facilities until completed).

**ARTICLE 4**  
**OTHER SERVICES**

**4.1 Services and Customer Billing**

**4.1.1 Company Billing**

Company shall bill for the services in subsections A and B below.

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

**B. Rolloff Box and Temporary Bin Services.** In regard to the billing of Rolloff Box Customers and the collection of those bills:

For Customers requesting temporary Bin service, the Company shall accept major credit cards for payment. Such Customers that do not use credit cards may be required by the 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 (5) business days of the termination of service.

For Customers receiving Permanent Rolloff Box Service, the 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).

**4.1.2 City Billing**

City shall perform all billing under this contract, other than Rolloff 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 the 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 4.1.4 below).

#### **4.1.4 Company Responsible for Service Level Accuracy**

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

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

#### **4.1.5 Review of Billings**

The Company shall review Billings to Customers under Sections 4.1.1 and 4.1.2. The purpose of the review is to determine that the amount which is being Billing to each Customer is correct in terms of the level of service being provided to such Customer by the Company. The Company shall review Customer accounts annually, and submit to the City a written report of that review annually on the anniversary of the Effective Day of this Agreement.

The Company shall maintain copies of Company Billings and receipts, each in chronological order, for a period of five (5) years after the date of service for inspection by the City upon request. The 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 the 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**

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% 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 permanent Bin and Commercial Cart and Can Customers, the Company shall pay to the City a Franchise Fee equal to a percentage of the Company's permanent Bin and Commercial Cart and Can rate revenue received. This fee shall be determined by the City and added on to the approved rates and billed by the Company. The Company shall remit this fee to the City as set forth below.

##### **B. Time and Method of Payment**

Company shall remit the Franchise Fee payments on or before the thirtieth (30<sup>th</sup>) day following the end of each quarter, during the term of this Agreement. If the Franchise Fee is not paid on or before the thirtieth (30<sup>th</sup>) day following the end of the quarter, the Company shall pay to the City a service charge, and not as interest, in an amount equal to ten percent (10%) of the amount owing for that quarter. The Company shall pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty (30) day period the Franchise Fee remains unpaid. Late payment service charges shall not be included in any revenue requirement. The Company agrees that the service charges contemplated by this section reasonably reflect the cost to the City to process any delinquency calculations and notices, and to monitor the 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 the 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. The 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. The Company shall also maintain a toll free telephone number for use during other than normal business hours. The Company shall have a representative, answering or message providing/receiving (voice-mail) service available at said after-hours telephone number. After-hours calls shall be responded to on the next business day.

Company shall provide the 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, the Company shall Collect the Refuse, Recyclable Materials, and/or Green 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 that 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 the City monthly.

### **4.2.3 Complaint Documentation**

All service complaints shall be directed to the Company. Daily logs of complaints concerning Collection of Solid Waste shall be retained for a minimum of twenty-four

(24) months and shall be available to the City at all times upon request. A summary of complaints shall be submitted to the City monthly.

The Company shall log all complaints received by telephone and said 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 the 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 (1) business day of receipt. The Company shall log action taken by the Company to respond to and remedy all complaints.

All Customer service records and logs kept by the Company shall be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the 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 the Company and its Customers regarding the services provided in accordance with this Agreement may be resolved by the City. The City's decision shall be final and binding.

Intervention by the 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 the Company. To the extent that remedies are warranted through this Agreement, this shall apply.

#### **4.2.5 Government Liaison**

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

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, Environmental Task Force meetings, 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 "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. Service Liaison will have daily presence in City and daily contact with City staff, and will coordinate with City engineering department to coordinate Collection practices to accommodate City road projects. City shall have the right to approve the Company's choice for a liaison.

#### **4.2.7 Customer Service Liaison**

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

#### **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 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, the Company agrees to implement a public education plan for the Manhattan Beach Zero Waste Program, with strategies and timetables, to expand public and Customer awareness concerning the need to and methods of reducing, reusing and recycling Solid Waste. The Company will provide and distribute Zero Waste literature in the form of online resources, web-ads, fliers, cards, magnets or other methods

acceptable to the City. Any outreach material utilizing paper, provided and distributed by the 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 approval by the City prior to the Effective 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 the 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 the 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 mailing described in Section 3.7.1.1 to all Residential Cart Customers.
- **Pre-Roll-Out Mailing** - At least 30 days prior to August 1, 2011, 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 an alternative format only if approved in advance by City (not PDF), ready for addition to the City and Company 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 or Cans distributed to a Customer. Packet should describe available services, including how to place Carts or Cans for Collection, which materials should be placed in each Cart or Can, Collection holidays, and a Customer service phone number.
- **Semi-Annual Brochures** – Four (4) pages, full color informing Customers of how to use available services, including holiday collection schedules and customer services numbers. Twice per year, two (2) separate brochures shall be developed: one for Residential Customers, and one for Commercial and Industrial Customers. Said brochures shall be prepared and direct-mailed by the Company twice per year (total of four (4) brochures per year) for each year in which this contract 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 the City’s request and with City’s review and approval of the materials. Notices will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the Company’s responsibility.
- **Annual Notifications of Free Commercial Recycling Services** – Company will provide all Bin Customers with notification and description of the free Commercial Recycling program available to them. Notification will be mailed by the City with customer’s bills, if size of the item and time permits. Otherwise, mailing using mailing labels from the City is the 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.

All brochures, mailings, and other educational materials are to be approved by the City in advance of distribution, and shall not bear the City seal unless otherwise approved by the City. Any outreach material utilizing paper provided and distributed by the 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 the new 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, and may also display Commercial Cans that are in use where Carts could not be accommodated. Residential workshops shall be conducted at a facility to be determined by City.

#### **4.3.4 Zero Waste Community Events**

At the direction of the City, the Company shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost to City, Collection of Solid Waste at the event and educational information promoting the goals of the 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 the City. This name is the exclusive property of the 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. The Company's use of the name does not relieve the Company of its ownership of its operations, any consequences of its actions, nor obligations under this Agreement. The Company's use of the name is not to be construed as constituting an arrangement by the 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 logo and shall become the property of the City upon distribution. City 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, refuse/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 by September 30, 2011 in an effort to implement recycling programs with an emphasis on Zero Waste, provide educational materials, and to train owner/manager in how to work with tenants to Recycle. Company shall provide each building owner and property manager with welcome packets for owner/manager 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; 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.

#### **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 Recognition

Company will work with City, Chamber of Commerce, and the Downtown Manhattan Beach Business Association to certify and recognize “green” businesses making efforts to become a Zero Waste Business in the community. Company will develop a comprehensive program to 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 in the City and complete a two page application and self assessment information about Zero Waste (waste reduction) practices in place and other green policies practiced.

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

### 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 business' 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 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 to be provided and replaced as needed;
- Source Separated Recyclables shall be Collected from the schools at no charge;
- Conduct a minimum of one assembly promoting recycling at each school in the 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 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 "Go Green Lunch Box" to support the local economy. These kits shall be provided at no additional cost.

#### **4.3.9 Manhattan Beach Education Foundation**

Company will contribution \$25,000 per year to Manhattan Beach Education Foundation ("MBEF").

#### **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 Facility Tours**

Company shall provide City Customers and organizations tours of its Recycling facility. Company may schedule tours on a quarterly basis and shall inform City of all quarterly tour dates 90 (ninety) days in advance.

#### **4.3.12 Recycling and Take-Back Programs**

Synthetic Carpet Pilot Program - Company will offer a one-year pilot program whereby Company will Collect and Recycle synthetic carpet, up to 600 square feet, 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. After completion of the one-year pilot program, Company and City will discuss the program results and the cost if the City wanted to continue the program.

Donation Box - If requested by City, Company will place a taper-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.

Recycling Rewards Clean Cart Challenge - Three months each year, Company will randomly assess Single and Multi-Family Recycling Carts and Bins and provide a reward to Customers whose Recycling Containers have less than 5% contamination. Company will promote this program on its website, in community newspaper ads and other media outreach throughout the term of the Agreement. This program will be provided at no additional cost to City or ratepayers. Company and City will review the

performance of this program in increasing diversion on an as-needed basis, and agree to negotiate with respect to changes in the program or substitution of new programs to increase diversion.

Manhattan Beach Middle Management Program ("MBMMP") - Company will support MBMMP through services such as beach cleanups, composting classes, and supply donations of gloves, bags and give-a-way items.

LA Shares Data Base - Company will work with LA Shares and develop a website for the redistribution of donated materials to non-profits and schools. This website will be similar to the LA Shares website in use for the City of Los Angeles. Initial program implementation will be for one year. Company and City will review the performance of this program at the end the initial one-year period, and agree to negotiate with respect to continuation of the program, changes in the program, or substitution of new programs to increase diversion.

At no additional cost, Company will promote and conduct:

- An annual Residential curbside Collection program for reusable items including textiles/clothes.
- An annual shred day, whereby Residents and businesses can deliver paper for confidential shredding.
- Five community shoe donation collection events, and shoe redistribution.
- An annual Halloween costume donation/exchange event.

#### **4.3.13 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, but not more than once every two years.

#### **4.5 Grant Writing**

Company will assist the 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 the 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.

The Company will perform the responsibilities and duties described in this Agreement in consideration of the right to receive compensation for services rendered at maximum rates fixed by the City from time-to-time.

#### 5.2 Initial Rates

The Company Compensation from the start of service under this Agreement through June 30, 2012 shall not exceed those set forth in Exhibit 3, unless amended by a written amendment to this Agreement entered into by and between the City and the Company. Unless and until the maximum rates set forth on Exhibit 3 are adjusted, the Company will provide the services required by this Agreement, receiving no more than the 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, 2012, and for all subsequent Rate Years, the Company may request an annual adjustment to the Company Compensation for all rate categories shown in Exhibit 3, as adjusted in accordance with this Section 5.3. The Company shall submit its request in writing, to be received by the City in Person or via certified mail, at least ninety (90) days prior to the start of the new Rate Year based on the method of adjustment described in Section 5.4. Failure to submit a written request at least ninety (90) days prior to the start of the new Rate Year shall result in the Company waiving the right to request such an increase for the subsequent year.

The 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 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. The Company Compensation rates exclude any amounts that may be added by the City to Customer invoices for the City to recover its administrative costs.

## **5.4 Method of Adjustments**

### **5.4.1 General**

For Rate Years beginning July 1, 2012, 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.

### **5.4.2 Cost Components for Rate Adjustment Indices**

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 5.4.3 for detailed Company Compensation adjustment procedures.

Cost Category	Initial Weightings		Rate Adjustment Factor (1)
	Exhibit 3A Bin & Cart	Exhibit 3B Roll-off	
Labor	30%	48%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	6%	13%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	17%	28%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal/ Green Waste	40%	N/A	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average or 5%, whichever is lower
Transformation	1%	N/A	Actual change in the per ton gate rate at the waste-to-energy facility approved for use
All Other	6%	11%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City's Public Works Director.

### 5.4.3 Rate Adjustment Steps

#### Bin, Can and Cart Rates

Bin, Can and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can and Cart rates as described below. See Exhibit 4A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 5.4.2. The increase or decrease in the labor component is calculated as described in Section 5.4.2 above. The increase or decrease in the transformation component is based on the transformation tipping fee at the transformation facility. The increase or decrease in the published indices for fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the calendar year ended the December prior to the Rate Year anniversary date and prior calendar year (See Exhibit 4C).

Step Two - The first rate adjustment cost components as a percentage of total costs are provided in Section 5.4.2 above, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates.

Step Three - Multiply the total weighted percent change from Step Two by the existing Customer rates to calculate the increase or decrease to the maximum rates. Add the rate increase or decrease to the existing rates to derive the newly adjusted rates.

Step Four - Recalculate weightings for the following year based upon these changes.

#### Roll-Off Box Rates

Roll-Off Box pull rates will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 5.4.2). See Exhibit 4B.

### **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. Company is expected to comply with SCAQMD regulations including Rule 1193, the Air Resource Board's regulations, and other Federal, State and local laws and regulations that may be enacted during the term of this Agreement, with no additional compensation. No adjustments may be made for such changes as a change in the market value of Recyclables, or processing costs for Recyclables and Green Waste, from the values assumed by the Company or inaccurate estimates by the Company of its proposed cost of operations, unionization of Company's workforce, change in wage rates or employee benefits, or the implementation or discontinuation of mandatory Recycling requirements.

City will permit an adjustment to the Disposal Component of 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 Disposal component adjustments granted under Section 5.3.

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 the 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. 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

The City may hold a public hearing on or about the two year anniversary of the start of this Agreement, and annually thereafter, at which time the 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 (45) days after receiving notice from the City of a Solid Waste Services and Performance Review Hearing, the Company shall, at a minimum, submit a report to the City indicating the following:

- a) Recommended changes and/or new services to improve the 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 the 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. The Company may submit other relevant performance information and reports for consideration. The City may request the 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 the Company's performance. The City and the Company may each select additional topics for discussion at any Solid Waste Services and Performance Review Hearing.

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

## **6.2 Performance Satisfaction Survey**

If requested by the 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 (10%) of the Residential Customers and ten percent (10%) 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 the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.



## ARTICLE 7

### RECORDS, REPORTS AND INFORMATION REQUIREMENTS

#### 7.1 General

The 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, the 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 the City, 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 the City, the records and reports to be maintained and provided by the 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

The Company shall maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City in the conduct of the 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 (5) years, and the last five (5) years of records shall be maintained for an additional three (3) years after the expiration of this Agreement.

The Company agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to the City and its official representatives during normal business hours. The City may review or utilize

any of the records described in this section for any purpose whatsoever. Failure to provide said 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 the City shall be segregated from other areas served by the Company.

### **7.2.3 Solid Waste Service Records**

Records shall be maintained by the Company for the 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 pick ups;
- f) Number of Refuse, Recycling, and Green 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**

The 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, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The 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 (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Company shall continue to retain records

required to be retained under the previous agreement in accordance with Section 7.2.4 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement. The Company agrees to notify the City's Risk Manager and the 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, and verification of Diversion rate. The first audit will be based on the Company's reports and records for Fiscal Year 2012 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). Company will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and \$50,000 for each subsequent biennial audit in 2012 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI from June 2012 to the June CPI index preceding the audit.

City has the option to audit the Company's operations, services, and Billings provided under this Agreement. Should such an audit disclose that two percent (2%) or more of the Customers' actual service levels based on field inspections differ from the service levels recorded at the City for the period under review due to the Company's failure to properly and promptly notify the City of service level or other Customer changes, City

may expand the scope of the audit and recover additional audit costs from the Company.

### **7.2.7 Payments and Refunds**

Should an audit by the City disclose that the Company Compensation payable to the Company was overpaid or underpaid or that Customers were overcharged or undercharged, due to the Company's failure to properly and promptly notify the 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, the Company shall pay to the City any overpayment of Company Compensation and/or refund the Customers any overcharges directly, or the City shall pay to the Company any underpayment of Company Compensation and/or bill the Customers for any undercharges directly, as the case may be. Any refunds to 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.

The Company may propose report formats that are responsive to the objectives and audiences for each report. The format of each report requires approval by the City. The Company agrees to submit all reports on computer discs or by electronic means in a format compatible with the City's software/computers at no additional charge, if requested by the City. The 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 twenty (20) calendar days after the end of each month. Quarterly reports shall be submitted within twenty (20) calendar days after the end of the calendar quarter. If requested, the Company's complaint summary, described in Section 7.3.3 (a), shall be sent to the Public Works Director within 5 days of request. Annual reports shall be submitted before January 31 following the reporting year.

All reports shall be submitted electronically to the 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 the Company for each month, sorted by type of solid Waste (Refuse, Recycling, Green Waste, Food Waste, tonnage recovered through the processing of mixed waste) and type of Customer (Residential Cart, Bin and Commercial Cart Service, Rolloff) 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 the City, as appropriate.
- d) Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.
- e) Number of 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.

### **7.3.3 Quarterly Reports**

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 the City may reasonably request or require.
- d) Tons Collected from City Facilities and litter Containers.
- e) List of Commercial Customers actively participating in Recycling 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, Can and Cart counts by size (32-, 64-, or 96-gallon) and type of service (Refuse, Recycling, Green Waste, and Residential versus Commercial), and Rolloff Box pulls per month by material type.
- c) Environmental Litigation Defense records required under Section 7.2.4.

- d) General information about the Company, including a list of officers and members of its board of directors, most recent annual report and other periodic public financial reports of the Company and its subsidiaries and Affiliated companies, and of other entities that may perform services under this Agreement, as the 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.

### **7.3.5 Financial Report**

The City may, at the City's option, request the 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 the 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 the Company as a direct cost of service. The Company may provide to the City the supplemental schedule on a compiled basis.

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

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

#### **7.4 Adverse Information**

**A. Reporting Adverse Information.** The Company shall provide the 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 the Company's performance of services pursuant to this Agreement, submitted by the Company to, or received by the 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 the City simultaneously with the Company's filing or submission of such matters with said agencies. The Company's routine correspondence to said agencies need not be routinely submitted to the City, but shall be made available to the City promptly upon the City's written request.

**B. Failure to Report.** The refusal or failure of the Company to file any required reports, or to provide required information to the City, or the inclusion of any materially false or misleading statement or representation by the Company in such report shall be deemed a material breach of the Agreement as described in Section 10 and shall subject the Company to all remedies which are available to the City under the Agreement or otherwise.

#### **7.5 Right to Inspect Records**

The 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 the Company or its related party entities that the City shall deem, in its sole discretion, necessary to evaluate annual reports, compensation applications provided for in this Agreement and the 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

The Company hereby agrees to and shall indemnify and hold harmless the 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 the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement; (2) the failure of the Company, its officers, employees, agents, Companies 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 the Company, its officers, employees, agents, Companies and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). 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. The Company further agrees to and shall, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the 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.

The Company, upon demand of the City, made by and through the City Attorney, shall protect the 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 the 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 the City. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement. The City and the Company agree to confer following any trial to decide jointly whether to appeal or to oppose any appeal. In the event the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company agree to share equally the costs of appeals. Should either the City or the 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.

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

## **8.2 Hazardous Substances Indemnification**

The Company shall defend with counsel reasonably acceptable to the 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 the Company, its officers, directors, employees, companies 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 the 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 the 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 the City exercises its option under Section 3.10, in writing, to direct refuse to another landfill that is not owned or operated by Company or its affiliates, or a landfill that has not been previously used by Company in performance of this Agreement, then this indemnity shall not apply to that portion of the waste that the City has redirected. Waiver of this indemnification will not apply to residue left over from processing activities that is disposed, even if the City directs waste to a particular processing facility.

### **8.3 AB 939 Indemnification**

The Company shall indemnify and hold harmless the 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 the City with respect to the waste stream Collected under this Agreement. Company's indemnification of the City is subject to all of the following restrictions:

- a. The Company's obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the 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 the company's obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company's breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the 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**

The City does not, and shall not, waive any rights against the Company which it may have by reason of the aforesaid hold harmless agreements, because of acceptance by the City or the deposit with the City by the Company of the insurance policies described in this provision. The insurance required is in addition to and separate from any other obligations contained in the contract.

**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: Ten Million Dollars (\$10,000,000) limit aggregate and Five Million Dollars (\$5,000,000) 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 project location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Five Million Dollars (\$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 One Million Dollars (\$1,000,000) per accident.

**C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or the 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) The 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 the Company; products and completed operations of the Company; Premises owned, leased or used by the Company; or vehicles owned, leased, hired or borrowed by the Company. The coverage shall contain no additional limitations on the scope of protection afforded to the City of Manhattan Beach, its elective and appointive boards, commissions, officials, employees, agents or volunteers unless specifically agreed to in writing by the City.
  - b) The Company's insurance coverage shall be primary insurance as respects the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of the 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 the 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.

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 the Company for the City.
3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the 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 Best's Insurance Reports of size category VII or larger and a rating classification of A or better.

**F. Verification of Coverage.** The Company shall furnish the City with certificates of insurance and with original endorsements affecting coverage required by this clause. 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 the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City will attempt to maximize confidentiality of the policies to the extent permitted by law.

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

**G. Companies and Subcontractors.** The 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 (30) days prior written notice by certified mail (10 days in the event of cancellation for non-payment), return receipt requested, shall be given to the 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 (30) days prior written notice (10 days in the event of cancellation for non-payment) shall be given to the 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 the 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 the City as an insured shall not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy shall protect the Company and the 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 one hundred (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, the 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.
2. The Company shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve the 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 the Company or any company or subcontractor on account of any occurrence related to this Agreement, the Company shall promptly report the facts in writing to the insurance carrier and to the City.

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

## **8.5 Performance Bond**

Concurrently with execution of this Agreement, the Company shall deliver to the City a performance bond, from an admitted surety insurer with a Bests Rating of not less than A-, in the amount of \$500,000 (Five Hundred Thousand Dollars) similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty 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 the Agreement and shall be null and void at the conclusion of the term of this Agreement only if the Company promptly and faithfully performs all terms and conditions of this Agreement.

#### **8.6 Forfeiture of Performance Bond**

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

#### **8.7 Performance Bond 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, the Company shall not terminate the performance bond, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond will automatically expire at the end of eighteen (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 bond. Neither permission from the City to discontinue holding this bond, nor permitted expiration after eighteen (18) months, shall relieve Company of payments to the City that may be due, or may become due.

#### **8.8 Property Damage**

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

## **8.9 Pavement Damage**

Company shall be responsible for 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 the Company, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or dispose of any or all Solid Waste that it is required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than seventy-two (72) hours, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the City should find that such accumulation endangers or menaces the public health, safety or welfare, then the City shall have the right, but not the obligation, upon notice to the Company during the period of such emergency as determined by the 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 the Company; and/or (2) to take possession of any or all of the 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 the City which the Company would otherwise be obligated to Collect, transport and properly dispose of or process pursuant to this Agreement.

Notice of the Company's failure, refusal or neglect to Collect, transport and properly dispose of or process Solid Waste may be given orally by telephone to the Company at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to the Company within twenty-four (24) hours of the oral notification.

The Company further agrees that in such event:

- A. It will take direction from the City to effect the transfer of possession of equipment and property to the City for the City's use.
- B. It will, if the 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 said property in operational condition.

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

The 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, the City shall pay to the Company the reasonable rental value of the equipment and Facilities, possession of which is taken by the City, for the period of the City's possession, if any, which extends beyond the period of time for which the Company has rendered bills in advance of service, for the class of service involved.

## **9.2 Billing and Compensation to the City During the City's Possession**

During such time that the City is providing Solid Waste services, as above provided, the City shall bill and collect payment from all users of the above-mentioned services as described in Section 4.1. The Company further agrees that, in such event, it shall reimburse the City for any and all costs and expenses incurred by the City beyond that billed and received by the 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 the Company under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by the City to the Company of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

## **9.3 City's Right to Relinquish Possession**

It is further mutually agreed that the City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to the Company and

thereupon demand that the Company resume the Solid Waste services as provided in this Agreement, whereupon the Company shall be bound to resume the same.

#### **9.4 City's Possession Not A Taking**

Except as otherwise expressly provided in the previous paragraph, the 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 the City to the Company; and (3) does not exempt the Company from the indemnity provisions of Article 9, which are meant to extend to circumstances arising under this section, provided that the Company is not required to indemnify the City against claims and damages arising from the sole negligence of the City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time the City has taken possession of such vehicles.

#### **9.5 Duration of the City's Possession**

The City's right pursuant to this Article to retain temporary possession of the Company's Facilities and equipment, and to render Collection services, shall terminate when the City determines that such services can be resumed by the Company, or when the City no longer reasonably requires such property or equipment. In any case, the City has no obligation to maintain possession of the 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 the Company.

## ARTICLE 10

### DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

#### 10.1 Events of Default

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

- A. **Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation regarding material information to the City.
- B. **Insolvency or Bankruptcy.** If the 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 the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement.
- D. **Violations of Regulation.** If the Company violates any orders or filings of any regulatory body having jurisdiction over the Company or City relative to the performance of this Agreement, provided that the 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 the Company is entered.
- E. **Failure to Perform.** If the 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 (2) consecutive days or more, unless excused per Section 10.5.
- F. **Failure to Pay.** If the Company fails to make any payments required under this Agreement and/or refuses to provide the City, within ten (10) 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 the 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 Environmental 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 the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the 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 the City by the 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 the Company, including without limits its equipment, maintenance or office Facilities, or any part thereof.

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

The Company shall be given seventy-two (72) hours from notification by the City to cure any default arising under subsections E, F, I and J provided, however, that the City shall not be obligated to provide the Company with a notice and cure opportunity if the 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 the Company or any of its officers, directors or employees be found guilty of felonious conduct related to the performance of this Contract, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials, the City reserves the right to unilaterally terminate this Contract 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 the agreement is terminated pursuant to the above, such termination shall not occur if, within six months after City determines to terminate, the Company completes a transfer of its contract rights and obligations to an individual or entity acceptable to the City pursuant to this Agreement.

## **10.3 Right to Terminate Upon Default**

Upon a default by the Company, the City shall have the right to terminate this Agreement upon a ten (10) days notice if the public health or safety is threatened, or otherwise a thirty (30) days notice, but without the need for any hearing, suit or legal action.

The City's rights to terminate this Agreement, or to take possession of the Company's Facility are not exclusive, and the 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 the 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 the City to the Company, the remedy of damages for a breach hereof by the Company is inadequate and the City shall be entitled in injunctive relief.



## 10.4 Liquidated Damages

A. **General.** The City finds, and the 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 the City as a result of a breach by the 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 the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (iii) 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 the City and that the City has considered and relied on the 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 the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the 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 the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 11, 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 the 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



- c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes that exceeds ten (10) such failures annually:  
\$150.00
- d) For each occurrence of Collecting Solid Waste during unauthorized hours (see Section 3.9.1) which exceeds five (5) 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 (10) such failures annually:  
\$150.00
- f) For each failure to deliver a Rolloff 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 (1) business day, and for each additional day in which the complaint is not addressed:  
\$250.00
- b) For each failure to process Customer complaints to the City as required by Article 5 herein:  
\$250.00
- c) For each failure to notify City within one (1) 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 thirty (30) days from the date submitted to Company.  
\$100.00
- f) For each additional thirty (30) day increment of time in which Company has failed to resolve a claim for damages within thirty (30) days from the claim date.  
\$100.00

4. **Timeliness of Submissions to the City**

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

- a) Monthly or Quarterly Reports: \$100 per day
- b) Annual Reports: \$350 per day

5. **Accuracy of Billing Information**

- a) For each failure to notify the City within 72 hours of a Customer or service change so that Customer billing records may be updated: \$100/occurrence

6. **Implementation of Public Education Plan**

- a) Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan. \$100 per day

7. **Diversion Efforts**

- a) For every Green Waste or Recycling Cart Collected as Refuse without issuing a red tag per Section 3.4: \$25 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 2012, and including any partial calendar year at the end of the term: \$25 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/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 (1) day prior to

new service provider servicing Customers with access issues, as described in  
Section 11.8: \$1,000/day

The 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, the City shall give the Company notice of its intention to do so. The notice will include a brief description of the incident(s)/non-performance. The Company may review (and make copies at its own expense) all non-confidential information in the possession of the City relating to incident(s)/non-performance. The Company may, within ten (10) days after receiving the notice, request a meeting with the City Manager or his or her designee. The 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 the 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.** The City may assess liquidated damages for each calendar day or event, as appropriate, that the Company is determined to be liable in accordance with this Agreement.

**D. Timing of Payment.** The Company shall pay any liquidated damages assessed by the City within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, the City may withhold amount due from the next monthly payment to Company, may proceed against the Bond required by the 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.

## 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 the Company's employees or directed at the 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 the 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 the City within ninety (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 the City's satisfaction. 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 Public Works Director sixty (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 (2) 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 the Company's services caused by one or more of the events excused shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company is excused from performing its obligations hereunder for any of the causes listed in this section for a period of thirty (30) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to taking possession of the Company's land, equipment and other property and engaging the Company's Personnel in Article 10 and this Article 11 will apply.

### **10.6 Assurance of Performance**

The City may, at its option and in addition to all other remedies it may have, demand from the Company reasonable assurances of timely and proper performance of this Agreement, in such form and substance as the City may require. If the Company fails or refuses to provide satisfactory assurances of timely and proper performance in the form and by the date required by the 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 the Company shall perform the services required by this Agreement as an independent Company engaged by the City and not as an officer or employee of the City nor as a partner of or joint venture with the City. No employee or agent or Company shall be or shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the 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. The Company shall be solely responsible for the acts and omissions of its officers, employees, Companies, subcontractors, Affiliates and agents. Neither the Company nor its officers, employees, Companies, subcontractors, Affiliates and agents shall obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits which accrue to the City employees by virtue of their employment with the City.

#### 11.2 Compliance with Law

In providing the services required under this Agreement, the 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. The 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 10 (the 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 the Company, "assignment" shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of the Company's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of the Company to a third party provided said sale, exchange or transfer may result in a change of control of the Company; (iii) 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 the Company; (iv) 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 the Company's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of Ownership, or change of control of the Company.

The Company acknowledges that this Agreement involved rendering a vital service to the City's residents and businesses, and that the City has selected the Company to perform the services specified herein based on (1) the 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 (2) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered by the Company under this Agreement.

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

- a) Company shall pay City its reasonable expenses for attorney's and/or 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 and Company shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.
- b) The Company shall pay a transfer fee to the City equal to 1% 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. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of the Company;
- c) The proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three (3) 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 proforma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such proforma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Company's operations.
  
- e) Except for an assignment to an Affiliate of the Company, the proposed assignee must furnish the City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the sale of operations conducted by the Company under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, State or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with State, federal or local Environmental Laws and that the assignee has provided the 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 the City to ensure the proposed assignee can fulfill the Terms of this Agreement in a timely, safe and effective manner.

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

#### **11.6 Contracting or Subcontracting**

The Company shall not engage any companies or subcontractors for Collection, transfer, processing, Recycling or Disposal of Solid Waste without the prior written consent of the 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, the Company will cooperate with the City and subsequent company(ies) to assist in an orderly transition which will include, but not be limited to, the 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 covenant and/or other equitable relief necessary to enforce this covenant.

Company shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. 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 The Company's Investigation**

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

### **11.12 Condemnation**

The City fully reserves the rights to acquire the 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.

### **11.13 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 the 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 the Company: USA Waste of California, Inc.  
1920 East 213<sup>th</sup> Street  
Long Beach, CA 90810  
Attn: District Manager

Copy to: USA Waste of California, Inc.  
Area General Counsel  
7025 Scottsdale Road, Suite 200  
Scottsdale, AZ 85253

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.

#### **11.14 Representatives of the Parties**

References in this Agreement to the "City" shall mean the City Council and all actions to be taken by the 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. The Company may rely upon actions taken by such delegates if they are within the scope of the authority properly delegated to them.

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

#### **11.15 City Free to Negotiate with Third Parties**

Notwithstanding the exclusive nature of the Franchise, the 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, the City may solicit proposals from the 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 under Section 10 of this Agreement.

#### **11.16 Compliance with Municipal Code**

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

#### **11.17 Privacy**

The 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 the 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.

**11.18 Compliance with Immigration Laws.**

The Company agrees that, in the performance of this Agreement, it will comply with all immigration laws.

**11.19 Proprietary Information, Public Records**

The City acknowledges that a number of the records and reports of the Company are proprietary and confidential. The Company is obligated to permit the City inspection of its records on demand and to provide copies to the City where requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and notwithstanding Section 11.18 (as it applies to City), any documents provided by the Company to the City that are public records may be disclosed pursuant to a proper public records request.

**11.20 Guarantee of Company's Performance**

Pursuant to a guarantee in substantially the form attached as Exhibit 5, Waste Management Holdings, Inc., a Delaware corporation which owns all of the issued and outstanding common stock of USA Waste of California, Inc., has agreed to guarantee the Company's performance of this Agreement. The Guarantee is being provided concurrently with the Company's execution of this Agreement.

**11.21 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 to attorney's fees in the amount reasonably incurred in the prosecution or defense of such action. The term "prevailing party" shall mean the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.



## ARTICLE 12

### MISCELLANEOUS AGREEMENTS

#### 12.1 Entire Agreement

This Agreement, including the Exhibits, represents the full and entire Agreement between the parties with respect to the matters covered herein. No verbal agreement or conversation with any office, agent, or employee of the City, either before, during, or after the execution of this contract, shall affect or modify any of the terms or obligations herein contained nor such verbal agreement or conversation entitle the Company to any additional payment whatsoever under the terms of this contract.

#### 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 and Other Agreements

All references in this Agreement to laws shall be understood to include such laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes any and all agreements heretofore entered into by the parties and the City.

#### 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 Agreement

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

**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, the City and the 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:

USA Waste of California, Inc.

COMPANY NAME

\_\_\_\_\_

By: Larry Metter

City Attorney

Name: Larry Metter

Title: Vice President

**EXHIBIT 1**  
**COMPANY PROPOSAL**

*January 20, 2011*

*City of Manhattan Beach/WMLA*

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

**EXHIBIT 3**  
**MAXIMUM INITIAL COMPANY COMPENSATION**

Residential Monthly Rates (through July 30, 2012)

<b>Volume-Based Automated Three-Cart Collection Service for Single Unit Homes</b>	<b>Monthly Rate</b>			
	Standard Service - New Carts	Standard Service - Used Carts	Extra Refuse Cart	Backyard Service Surcharge (2)
96-gallon refuse <sup>(1)</sup>	\$ 17.11	\$ 16.25	\$ 8.00	\$ 7.00
64-gallon refuse <sup>(1)</sup>	\$ 13.11	\$ 12.25	\$ 6.00	\$ 7.00
35-gallon refuse <sup>(1)</sup>	\$ 9.11	\$ 8.25	\$ 4.00	\$ 7.00

<b>Automated Three-Cart Collection Service for Residential Cart Customers with 2 to 9 Units</b>	<b>Monthly Rate Per Building</b>		
	Standard Service - New Carts	Standard Service - Used Carts	Backyard Service Surcharge (2)
2 Dwelling Units	\$ 23.69	\$ 22.17	\$ 14.00
3 Dwelling Units	\$ 35.54	\$ 33.26	\$ 21.00
4 Dwelling Units	\$ 47.38	\$ 44.34	\$ 28.00
5 Dwelling Units	\$ 59.23	\$ 55.43	\$ 35.00
6 Dwelling Units	\$ 71.07	\$ 66.51	\$ 42.00
7 Dwelling Units	\$ 82.92	\$ 77.60	\$ 49.00
8 Dwelling Units	\$ 94.76	\$ 88.68	\$ 56.00
9 Dwelling Units	\$ 106.61	\$ 99.77	\$ 63.00

(1) Rate for first refuse container at each dwelling unit.

(2) Backyard Service Surcharge is in addition to Standard Service fee and is assessed per dwelling unit.

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

**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**

**(through July 30, 2012)**

**Commercial Bin Rates**

Refuse Bin Size (in Cubic Yards)	Number of Pickups Per Week							Extra Pickups
	1	2	3	4	5	6	7	
Commercial Can	\$ 13.86	\$ 27.72	\$ 41.58	\$ 55.44	\$ 69.30	\$ 83.16	\$ 97.02	\$ 3.50
32-Gallon Cart	\$ 13.86	\$ 27.72	\$ 41.58	\$ 55.44	\$ 69.30	\$ 83.16	\$ 97.02	\$ 3.50
64-Gallon Cart	\$ 27.72	\$ 55.44	\$ 83.16	\$ 110.88	\$ 138.60	\$ 166.32	\$ 194.04	\$ 7.00
96-Gallon Cart	\$ 41.58	\$ 83.16	\$ 124.74	\$ 166.32	\$ 207.90	\$ 249.48	\$ 291.06	\$ 10.00
2 Cubic Yard	\$ 67.68	\$ 105.77	\$ 141.00	\$ 176.27	\$ 211.52	\$ 282.02	\$ 352.51	\$ 19.35
3 Cubic Yard	\$ 86.93	\$ 134.18	\$ 178.89	\$ 223.62	\$ 268.34	\$ 357.77	\$ 447.22	\$ 29.00
4 Cubic Yard	\$ 104.15	\$ 162.78	\$ 217.03	\$ 271.29	\$ 325.54	\$ 434.07	\$ 542.58	\$ 38.69
6 Cubic Yard	\$ 133.89	\$ 209.26	\$ 279.02	\$ 348.78	\$ 418.53	\$ 558.05	\$ 697.55	\$ 58.01
2 Cubic Yard Compactor	\$ 115.55	\$ 180.53	\$ 240.70	\$ 304.07	\$ 361.07	\$ 481.47	\$ 601.95	\$ 33.04
3 Cubic Yard Compactor	\$ 147.35	\$ 230.30	\$ 309.22	\$ 383.74	\$ 460.46	\$ 613.98	\$ 767.50	\$ 49.15
4 Cubic Yard Compactor	\$ 179.38	\$ 280.29	\$ 373.73	\$ 467.11	\$ 560.60	\$ 747.42	\$ 934.40	\$ 66.64
6 Cubic Yard Compactor	\$ 231.43	\$ 361.68	\$ 482.27	\$ 602.80	\$ 723.36	\$ 964.49	\$ 1,205.62	\$ 100.27
2 Cubic Yard Split Bin (1)	\$ 64.18	\$ 102.69	\$ 136.89	\$ 171.11	\$ 205.34	\$ 273.10	\$ 341.37	\$ 19.35
3 Cubic Yard Split Bin (1)	\$ 65.93	\$ 104.17	\$ 138.86	\$ 173.58	\$ 208.29	\$ 277.03	\$ 346.29	\$ 29.00
4 Cubic Yard Split Bin (1)	\$ 67.68	\$ 105.77	\$ 141.00	\$ 176.27	\$ 211.52	\$ 282.02	\$ 352.51	\$ 38.69

(1) Assumes half refuse, have recyclables.

**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(through July 30, 2012, new or used cart option)**

**Rolloff Box Rates**

<b>Rate Per Pull, Excluding Disposal</b>	
Standard Box, Any Size	\$ 154.51 per pull
Compactor Box, Any Size	\$ 208.59 per pull
<b>Rolloff Per Ton Charges</b>	
Refuse Disposal	\$ 52.96 per ton
Mixed Recyclables	\$ - per ton
Green Waste	\$ 50.12 per ton
<b>Additional Container Rental - (for boxes emptied less than 3x/ month)</b>	
Standard Box, Any Size	\$ 27.60 per week
Compactor Box, Any Size	\$ 27.60 per week

**Optional C&D Rates**

<b>Rate Per Pull, Excluding Disposal</b>	
25-40 cubic yard roll-off box	\$ 154.51 per pull
Low Boy (10 cubic yard) roll-off box	\$ 154.51 per pull
<b>Rolloff Per Ton Charges</b>	
Mixed Loads of C&D Debris	\$ 35.02 per ton
Source Separated (dirt, concrete, wood, etc.)	actual cost at facility, no higher than mixed load rate
<b>Temporary Bin Service</b>	
First Dump, including delivery and disposal	\$ 81.21 per dump
Additional dumps, including disposal	\$ 27.06 per dump

**EXHIBIT 3 (continued)**  
**MAXIMUM INITIAL COMPANY COMPENSATION**  
**(through July 30, 2012, new or used cart option)**

Temporary Bins

Service Category	Bin Size (Cubic Yards)			
	2	3	4	6
10 Day Rental with One Dump Included	\$ 72.28	\$ 81.21	\$ 90.14	\$ 108.01
Each Additional Dump	\$ 18.13	\$ 27.06	\$ 35.99	\$ 54.12
Rent Per Day Beyond 10 Days	\$ 1.93	\$ 1.93	\$ 1.93	\$ 1.93

Extra Services

Hasp and Lock Services	\$ 7.74 per bin per month (any frequency)
Cart Exchange	\$ 15.00 per applicable overage (see Section 3.7.1.1)
Refuse Cart Overage	\$ 5.00 per applicable overage (see Section 3.1.2)
Additional Residential Bulky Item Pickup	\$ 21.60 per pickup (three items) in excess of three pickups per year
Commercial Bulky Item Pickup Per Item	
• White Goods with CFCs	\$ 16.20 per item
• All Other Items	\$ 10.80 per item
Nursery/ Florist Green Waste Cart (Section 3.3.1)	\$ 7.38 per 95-gallon green waste cart per month
	\$ 6.43 per 64-gallon green waste cart per month
	\$ 5.62 per 35-gallon green waste cart per month
Emergency Collection and Disposal	\$ 75.60 per hour
Bin Overage Charge	\$ 35.00 per applicable overage (see Section 3.1.6)



## EXHIBIT 4A

### EXAMPLE CART & BIN RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices					
Row	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/Column A) -1)
1	Labor	(1)	107.30	109.15	1.7%
2	Fuel	(2)	344.0	159.1	-53.8%
3	Equipment	(3)	118.9	124.3	4.5%
4	Disposal	(5)	215.8	219.2	1.6%
5	Transformation	(6)	\$ 48.00	\$ 55.00	14.6%
6	All Other	(4)	215.8	219.2	1.6%

Step Two: Determine components					
Row	Adjustment Factor	Index	D Cost Factor Category Weighted as a % of Component Total (7)	E Percent Change In Index (from Column C)	F Total Weighted Change (Columns D x E)
7	Labor	(1)	30.0%	1.7%	0.5%
8	Fuel	(2)	6.0%	-53.8%	-3.2%
9	Equipment	(3)	17.0%	4.5%	0.8%
10	Disposal	(5)	40.0%	1.6%	0.6%
11	Transformation	(6)	1.0%	14.6%	0.1%
12	All Other	(4)	6.0%	1.6%	0.1%
13	Total		100.0%		-1.1%

Step Three: Apply percentage change to rates						
Row	Rate Category		G Current Contractor Rate (8)	H Total Weighted Percent Change (from Column F)	I Rate Increase or Decrease (Column G x Column H)	J Adjusted Rate (Column G + Column I)
14	64-gallon Cart - new carts	\$	13.11	-1.1%	\$ (0.14)	\$ 12.97
15	2 unit Service	\$	23.69	-1.1%	\$ (0.26)	\$ 23.43
16	1 unit backyard surcharge	\$	14.00	-1.1%	\$ (0.15)	\$ 13.85
17	2 unit backyard surcharge	\$	21.00	-1.1%	\$ (0.23)	\$ 20.77
18	Extra bulky item	\$	21.60	-1.1%	\$ (0.24)	\$ 21.36
19	Special Pickup/Cart Ov.	\$	5.00	-1.1%	\$ (0.05)	\$ 4.94
20	Commercial Can	\$	13.86	-1.1%	\$ (0.15)	\$ 13.71
21	3 yd bin, 1x week	\$	86.93	-1.1%	\$ (0.96)	\$ 85.97
22	3 yd comp., 1x week	\$	147.35	-1.1%	\$ (1.62)	\$ 145.73
23	3 yd bin, extra pickup	\$	29.00	-1.1%	\$ (0.32)	\$ 28.68

Step Four: Re-weight cost components							
Row	Adjustment Factor	Index	K Cost Component (Column D)	L Percent Change in Index (Column E)	M Change in Cost Component Weightings (Column K x Column L)	N Adjusted Cost Component Weightings (Column K + Column M)	O Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
24	Labor	(1)	30.0%	1.7%	0.5%	30.5%	30.8%
25	Fuel	(2)	6.0%	-53.8%	-3.2%	2.8%	2.8%
27	Equipment	(3)	17.0%	4.5%	0.8%	17.8%	18.0%
28	Disposal	(5)	40.0%	1.6%	0.6%	40.6%	41.1%
29	Transformation	(6)	1.0%	14.6%	0.1%	1.1%	1.1%
30	All Other	(4)	6.0%	1.6%	0.1%	6.1%	6.2%
31	Total		100.0%			98.9%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.  
(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.\*  
(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.\*  
(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.\*  
(5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change., capped at 5% annually.\*  
(6) Gate rate at transformation facility (if applicable)  
(7) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.  
(8) Example rates listed. Adjustment applies to all applicable rate categories.

\* See Exhibit 4C.

## EXHIBIT 4B

### EXAMPLE ROLL-OFF BOX RATE ADJUSTMENT FORMULA

Step One: Calculate percentage change in indices

Row	Adjustment Factor	Index	A	B	C
			Old Index Value	New Index Value	Percent Change in Index (Column B/ Column A) -1)
1	Service Component (Pull Rate)				
2	Labor	(1)	107.30	109.15	1.7%
3	Fuel	(2)	344.0	159.1	-53.8%
4	Equipment	(3)	118.9	124.3	4.5%
5	All Other	(4)	215.8	219.2	1.6%
6	Refuse/Ton	(5)	215.8	219.2	1.6%

Step Two: Determine components

Row	Adjustment Factor	Index	D	E	F
			Cost Factor Category Weighted as a % of Component Total (6)	Percent Change in Index (from Step One, Column C)	Total Weighted Change (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	48.0%	1.7%	0.8%
9	Fuel	(2)	13.0%	-53.8%	-7.0%
10	Equipment	(3)	28.0%	4.5%	1.3%
11	All Other	(4)	11.0%	1.6%	0.2%
12	Service Component Total		100.0%	n/a	-4.7%
13	Refuse/Ton	(5)	100.0%	1.6%	1.6%

Step Three: Apply percentage change to rates

Row	Rate Category	G	H	I	J
		Current Customer Rate	Total Weighted Percentage Change (from Column F)	Rate Increase or Decrease (Column H x Column I)	Adjusted Rate (Column H + Column J)
14	Standard Roll-off Box Pull Rate	\$ 154.51	-4.7%	\$ (7.26)	\$ 147.25
15	Compactor Roll off Box Pull Rate	\$ 208.59	-4.7%	\$ (9.80)	\$ 198.79
16	Refuse/Ton	(5) \$ 52.96	1.6%	\$ 0.85	\$ 53.81

Step Four: Re-weight service component cost components

Row	Adjustment Factor	Index	K	L	M	N	O
			Cost Component (Column D)	Percent Change in Index (Column E)	Change in Cost Component Weightings (Column K x Column L)	Adjusted Cost Component Weightings (Column K + Column M)	Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	48.0%	1.7%	0.8%	48.8%	51.2%
18	Fuel	(2)	13.0%	-53.8%	-7.0%	6.0%	6.3%
19	Equipment	(3)	28.0%	4.5%	1.3%	29.3%	30.7%
20	All Other	(4)	11.0%	1.6%	0.2%	11.2%	11.8%
21	Total		100.0%			95.3%	100.0%

(1) Employment Cost Index CIU201000052000001, Total compensation, Private industry, Index number, Transportation and material moving.\*

(2) Producer Price Index, WPU 0531 not seasonally adjusted, Fuels and related products and power, natural gas - average annual change.\*

(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing - average annual change.\*

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change.\*

(5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change., capped at 5% annually.\*

(6) First year based on Section 6.4. After the first adjustment, this column comes from Column O of the previous year's rate adjustment worksheet.

\* See Exhibit 4C.

**EXHIBIT 4C**

**EXAMPLE CALCULATION FOR**

**AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES**

Rate adjustment indices for labor, fuel, equipment, disposal [if applicable] and “all other” are calculated using the “average annual change” as demonstrated in the example below. The Bureau of Labor Statistics publishes these monthly indices, and the “Annual” index, which is an average of the calendar year’s monthly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2010, the 2009 average annual index of 219.235 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the 2008 average annual index of 215.572 would have been the “Old Index Value” in Column A. This would have resulted in a 1.7% increase to the “disposal “and “all other” cost components in Column C.

**Consumer Price Index - All Urban Consumers, U.S. City Average**  
**All items less food and energy, CUUR0000SAOL1E**

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2008	213.138	213.866	214.866	215.059	215.18	215.553	216.045	216.476	216.862	217.023	216.690	216.100	215.572
2009	216.719	217.685	218.639	219.143	219.128	219.283	219.350	219.596	220.137	220.731	220.384	220.025	219.235

Average Annual Change: **1.7%**

## EXHIBIT 5

### CORPORATE GUARANTY

#### Guaranty

THIS GUARANTY (the "Guaranty") is given as of the \_\_\_\_ day of \_\_\_\_, 2011.

THIS GUARANTY is made with reference to the following facts and circumstances:

- A. USA Waste of California, Inc., hereinafter ("Owner") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by Waste Management Holdings, Inc., (Guarantor).
- B. Owner and the City of Manhattan Beach ("the City") have negotiated an Agreement for Collection, Processing, and Disposal of Solid Waste dated as of \_\_\_\_\_, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.
- C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner's performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

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

1. **Guaranty of the Agreement.** Guarantor hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, or cause to perform them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).

3. **Waivers.** Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (3) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder or the impairment or suspension of any of the City's rights or remedies against the Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.

The Guarantor hereby waives any and all benefits and defenses under California Civil Code Section 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Owner, (b) proceed against or exhaust any security or collateral the City may hold now or hereafter hold, or (c) pursue any other right or remedy for Guarantor's benefit, and agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Owner or any other guarantor or pledgor and without proceeding against or exhausting any security or collateral the City may hold now or hereafter hold. City may unqualifiedly exercise in its sole discretion any or all rights and remedies available to it against Owner or any other guarantor or pledgor without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor hereby expressly waives, diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed hereunder are paid or performed, Guarantor's obligations hereunder shall continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Owner prior to such avoidance or recovery, and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.

5. **No Waivers.** No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall be a waiver of any obligation of Guarantor or right of the City to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorney's Fees.** In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder.

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

CT Corporation System  
818 W. 7<sup>th</sup> Street  
Los Angeles, CA 90017

With a copy by certified mail to:

Corporate Secretary  
Waste Management Holdings, Inc.  
1001 Fannin, Suite 4000  
Houston, TX 77002

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.

9. **Binding On Successors.** This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.

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

To the City:

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

with a copy to the City Counsel at the same address.

To the Guarantor:

Corporate Secretary  
Waste Management Holdings, Inc.  
1001 Fannin, Suite 4000  
Houston, TX 77002

By: \_\_\_\_\_  
(title)

By: \_\_\_\_\_  
(title)



## 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) 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 contract.

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 said contract to be performed by said PRINCIPAL, as in said contract set forth, then this BOND shall be null and void; otherwise it will remain in full force and effect.

And the said Surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract 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 contract or to the work or to the specifications.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

\_\_\_\_\_  
a \_\_\_\_\_ Corporation

\_\_\_\_\_  
SURETY

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

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

(PRINCIPAL)

(ATTORNEY IN FACT)

(SEAL)

(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 SPONSORED SPECIAL EVENTS

Row	Event
1	Earth Day Fair
2	Family Campout
3	Fishing Derby
4	Concerts in the Park (11 weeks)
5	Tennis Tournament
6	Sand Castle Design Contest
7	Employee Picnic
8	Polliwog Movie in the Park
9	Pet Appreciation Expo
10	6-Man Volleyball Tournament & Surf Festival
11	Halloween Carnival
12	Downtown Open House/Pier Lighting Ceremony
13	Pier Fireworks Show
14	Family Crafts Night
15	Cultural Arts Fair
16	Senior Health Fair
17	2012 City of MB Centennial Celebrations

## EXHIBIT 9

### OPTIONAL PROGRAMS

City may instruct Company to implement the following programs during the Agreement Term in accordance with the terms described below. Company shall be required to send a public outreach piece at the beginning of each program.

#### **A. Door-to-Door HHW Collection Program**

City may direct Company to begin the following program upon 90 days written notice, with the following rate adjustment effective upon full implementation of program. Upon initiation of this program, City will adjust Residential Customer rates by \$0.40 per dwelling unit per month while the program is in place. City will determine how the increase shall be billed to Customers. City may choose to apply this rate to Single Family Customers, Multi-Family Cart Customers and/or Multi-Family Bin Customers, with only the participating sectors assessed the per unit fee. This \$0.40 per month rate is effective as of the start of service under this Agreement and will subsequently be adjusted by the change in CPI calculated in the same manner as under Section 5.3 beginning with the first adjustment as of July 1, 2012.

Company shall provide unlimited door-to-door collection of Household Hazardous Waste (HHW) from both Single Family and Multi-Family Customers. Company shall provide Residential Customers with a number to call in 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 in for a pickup. Company shall be required to update the 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 the City's "e-book") in public education mailers required under Section 4.3.2.

#### **B. Additional Processing of Bin Route Refuse**

City may request to have Company process sufficient Refuse that is Collected on Bin routes to recover a minimum of 3,549 tons per calendar year from this program, including the 1,365 tons required to be recovered under Section 3.5 and an additional 2,184 tons to be recovered. These annual tonnage requirements shall be pro-rated if program begins or ends partially through a calendar year. City may instruct Company to begin the additional processing upon 90 days notice, with a corresponding Company Compensation increase of 16% to be applied to monthly Bin Collection service rates and extra bin pickup rates and temporary Bin service, but excluding ancillary service rates such as Bin rental or locking Bin charges.

For each ton short of the required 3,549 tons (or as pro-rated) that Company fails to divert each calendar year from landfilling through this processing of Commercial Refuse, Company shall be assessed liquidated damages of \$25 per ton. Alternatively, provided Company is sending all Commercial Bin, Cart and Can Refuse Collected on Bin routes for processing, but failing to meet the minimum diverted tonnage requirement due to a low recovery rate from this material, Company may off-set this diversion tonnage shortfall by sending additional tonnage (i.e. Residential Cart Refuse, processing residue) to a transformation facility to the extent the City is provided with additional diversion credit. To the extent the additional tons diverted through transformation offset the processing tonnage diversion shortfall, liquidated damages will not be assessed.

Tonnage processed and recovered under this program shall be separately listed on monthly tonnage reports. This program will enhance, and not replace, the provision of source separated Recyclables Collection at no additional charge. This is intended to increase diversion over and above current program levels. This program does not include any business instruction and therefore does not need to be placed in outreach materials.

**C. 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 70% 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.

## EXHIBIT 10

### CITY HAZARDOUS WASTE MANIFEST

The following is an estimate of the types and volumes of materials generated by the 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
City facility batteries only*	apx. 1,000 pounds
Circuit Boards	(1) 32 gallon container
F-40 Lamps	870-900
F-60 Lamps	25-30
F-96 Lamps	25-30
HID Lamps	50-60
Printer Cartridges	Unknown
Toner	Unknown
Miscellaneous Electronic Waste - CRTs, keyboards, small appliances, etc.	40-50 per year
(Fire Dept) Combustible liquids N.O.S. (decamethylcyclopentasiloxane)	Small containers
(Fire Dept) This is noted (per the Waste Manifest) as non-RCRA hazardous waste, solid (absorbent contaminated with hydro carbons).	(4) 55 gallon drums
(Garage) Waste oil	Apx. 1,000 gallons per year (Bulk in 500 gallon above ground tank)
(Garage) Antifreeze	Apx. 700 gallons per year (Bulk in 250 Gal. above ground tank)
(Garage) Waste Oil Filters	(5) 55 gallon drums (apx. 50-70 filters per drum)
(Garage) Waste Fuel Filters	(2) 55 gallon drums (apx. 80-150 filters per drum)
(Garage) Absorbent/Pig Blankets (wipes)	(4) 55 gallon drums (average weight is 200 Lbs. per drum)
(Garage) Tires	400
(Garage) Batteries (Automotive/Industrial)**	20
Miscellaneous liquids	(2) 55 gallon drums
(Streets Division) Aerosol Sprays	Apx. 60 cans per year
Paint - low VOC	Apx. 200-250 pails per year



## **EXHIBIT 11**

### **COMMITMENT TO ENVIRONMENTAL SUSTAINABILITY**

City's "Commitment to Environmental Sustainability" as included in the City's Request for Proposals for Integrated Solid Waste Management Services, as released on September 9, 2010:

"The City of Manhattan Beach has always been an environmentally-conscious city, implementing sustainable programs to preserve its natural beauty and keep the ocean safe. The City's General Plan, which lays out the long-term goals, programs and policies for future development, contains a number of policies which support a "greener" Manhattan Beach. Those dedicated to the topic of solid waste include:

- Implementing construction and demolition programs that require enhanced recycling efforts
- Encouraging maximum recycling in all sectors of the community, including residential, commercial, industrial, institutional, and construction
- Encouraging the City's franchise trash service to have more recycling programs

More recently, in 2007, the Manhattan Beach City Council signed the US Mayors Climate Protection Agreement. It acknowledged the dangers associated with global warming and made a commitment to take steps to reduce global warming pollution to seven percent below 1990 levels by 2012, a goal often referred to as the "Kyoto Protocol." This commitment to reducing the City's greenhouse gas pollution requires a dedication to reduce the City's landfill tonnage.

In 2008 the City published its comprehensive Green Report declaring a new level of commitment to environmental stewardship, not only for climate protection, but for all areas of city operations. The City created a 19-member citizen Environmental Task Force (ETF) who used the Green Report as a tool to create new programs and policies guiding the City toward greenhouse gas reduction. The Solid Waste and Recycling Subcommittee provided environmentally favorable recommendations for this RFP and created a Waste Reduction Plan for the City to utilize for future projects. The City included recommendations from the ETF's Solid Waste and Recycling Subcommittee in this Agreement, with the intent of entering into

this franchise agreement with a contractor who will actively and creatively assist the City in reducing its landfill tonnage.

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- Tiered residential rate structure with free recycling and green waste collection;
- Residential and restaurant food waste programs (included as pilot programs);
- City-wide automated residential collection of all three waste streams (refuse, recycling, green waste);
- Household hazardous waste door-to-door collection program;
- Abandoned Item Collection in the Public Right-of-Way;
- Sharps Collection Program;
- Processing a portion of commercial mixed waste to recover recyclables;
- Overage fees for excessive, overflowing refuse;
- Minimum 70% construction and demolition debris diversion requirements if City chooses to include this waste stream as exclusive to the franchise;
- A focus on "Zero Waste" in outreach to all sectors;
- Specific outreach plans for multi-family customers;
- School Zero Waste outreach plan and hauler-supplied in-classroom and on campus recycling containers;
- Commercial Zero Waste recognition plan to reduce waste and improve recycling in this sector;
- Alternative fuel collection vehicles;
- Styrofoam Recycling; and,
- City facility hazardous waste pickup.

It is imperative that the City enter into a franchise with a hauler who will actively and creatively assist the City in reducing its landfill tonnage. The City is currently a member of the

Los Angeles Regional Agency, or LARA, which has an estimated diversion rate of 66% for 2008 (based upon disposal of 4.7 pounds per person per day and a 50% disposal target of 6.9 pounds per person per day, as published on the CalRecycle website). The City is one of 16 member cities which contribute to this overall diversion rate. This diversion rate includes residential and commercial refuse and recycling, construction and demolition debris, third-party diversion and source reduction efforts. It is the goal of the City to continue to increase its City-wide diversion to significantly exceed the State mandate set forth in AB 939, with a goal of Zero Waste.”