CITY OF BEVERLY HILLS

PUBLIC WORKS SERVICES DEPARTMENT

MEMORANDUM

TO: PUBLIC WORKS COMMISSION

FROM: James Burnley, Solid Waste Manager

Michelle Tse, Planning and Research Analyst

DATE: March 10, 2016

SUBJECT: SOLID WASTE FRANCHISE AGREEMENT SCHEDULE UPDATE

ATTACHMENT:

1. Consent to Assignment and Agreement Agenda Report dated January 6, 2016

By way of background, the City originally entered into an Agreement with Crown Disposal in 2010 for solid waste collection services and residential solid waste processing. In November 2014, the City received correspondence from Crown Disposal requesting that the City consent to assignment of the solid waste franchise agreement to Recology Los Angeles ("RLA"). A Solid Waste Franchise Transfer Ad Hoc Committee (Councilmembers Krasne and Brien) was appointed to work with staff in the review process and recommended the assignment. The City Council subsequently approved the assignment at the January 6, 2015, meeting. Attachment 1 is a copy of the agenda report about the consent of assignment and includes a copy of the franchise agreement.

The City's solid waste franchise agreement is set to expire on March 31, 2018. The franchise agreement provides the City with two options to extend it on a month-to-month basis for up to 24 months each at the City's sole discretion. Therefore, the City may extend the Agreement for up to four additional years to March 31, 2022.

During the discussions, the Ad Hoc Committee expressed that it would be prudent for the City to begin work on a competitive Request for Proposal ("RFP") process in anticipation of the expiration of the initial franchise term in early 2018. As such, staff has been working with HF&H to develop a Zero Waste Plan, with the intent that the results from the Zero Waste Plan would be incorporated into the solid waste RFP. Staff will provide an update on the Zero Waste plan development to the Commission at its April 2016 meeting. Staff is also concurrently working with HF&H to develop the RFP framework. The intent is to have a draft RFP completed by June 2016 for review.

At this time, staff is recommending that two (2) Public Works Commissioners be appointed to an Ad Hoc Solid Waste Franchise Subcommittee to work with staff on the RFP development and negotiation process for solid waste services.

AGENDA REPORT

Meeting Date:	January 6, 2015
Item Number:	F-2
To:	Honorable Mayor & City Council
From:	Trish Rhay, Assistant Director of Public Works – Utilities Michelle Tse, Senior Management Analyst MST
Subject:	CONSENT TO ASSIGNMENT AND FIRST AMENDMENT TO FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE COLLECTION SERVICES AND RESIDENTIAL SOLID WASTE PROCESSING
Attachments:	1. Consent and Amendment Agreement 2. December 15, 2014 Response of Recology to City's Request for Information 3. December 2, 2014 Study Session Report

RECOMMENDATION

Staff and the Solid Waste Franchise Transfer Ad Hoc Committee (Councilmembers Krasne and Brien) recommend that the City Council consent to assignment of the City's solid waste franchise agreement from Crown Disposal Co., Inc. ("Crown Disposal") to Recology Los Angeles ("RLA") subject to certain conditions and approval of the First Amendment of the Agreement. Staff, including the City Attorney's Office and the City's solid waste consultant, have prepared the attached Consent to Assignment and Amendment to the Franchise Agreement to implement this direction and recommend adoption of the documents.

INTRODUCTION

On December 21, 2010, the City and Crown Disposal entered into a Franchise Agreement for Commercial Solid Waste Collection Services and Residential Solid Waste Processing ("Franchise Agreement"). In correspondence dated November 21, 2014, the City received written notice from Crown Disposal requesting that the City consent to the assignment of the Agreement to RLA. A Study Session was held on December 2, 2014 during which Councilmembers Krasne and Brien were appointed to serve on the Solid Waste Franchise Transfer Ad Hoc Committee to work with staff regarding the requested

consent to assignment. A copy of the December 2, 2014 staff report is attached for reference.

Section 11.6 of the Agreement contains provisions regarding assignment, including the City recovering reasonable costs for considering the assignment and payment of an assignment fee. The process also requires RLA to provide the City with its financial statements, disclosure of any relevant legal issues for the past five years, proof of solid waste management experience, and any other relevant information requested by the City.

The City has no prior experience working with RLA, or with its parent company, Recology, Inc. As part of the City's due diligence and evaluation process, the City sought to independently determine that RLA is qualified and is the type of company with which the City desires to enter into a business relationship that is consistent with the City's goals and values. Accordingly, the City requested information from Recology including but not limited to references for ten current public agencies serviced by Recology, financial statements, and information on past legal actions and/or litigation. HF&H Consultants ("HF&H") has worked with the City in the past to provide advice on solid waste matters and assisted the City with this evaluation.

Recology, Inc. is the parent company for RLA. Recology, Inc. has significant experience providing solid waste services, primarily in Northern California. Its closest operations to Beverly Hills are currently in Kern County. It is a large privately held company based in Northern California. Recology was sold to its 570 employees and their Employee Stock Ownership Plan (ESOP) in 1986. It originally operated under the name Norcal Waste Systems until its name was changed to Recology and currently provides solid waste services to Northern California cities such as Atherton, Hillsborough, Menlo Park, San Francisco, Cupertino, San Mateo, and Redwood City.

The Solid Waste Ad Hoc Committee met with staff on December 11, 2014 and again on December 23, 2014 to discuss the possible assignment of the Franchise Agreement. The Committee evaluated the results of the due diligence investigation performed by HF&H and the City Attorney's office, and provided direction regarding conditions for approval of the assignment. The Ad Hoc Committee also directed staff to evaluate the existing terms of the Franchise Agreement and negotiate modifications related to the transition from Crown Disposal to RLA. As a result of the negotiations, RLA agreed to several clarifications of the provisions of the Franchise Agreement, agreed to formalize a program to provide the City with free composting material and to revise Section 5.6 of the Franchise Agreement to further limit its ability to request extraordinary rate adjustments.

DISCUSSION

The Franchise Agreement is set to expire on March 31, 2018. The Franchise Agreement provides the City with two options to extend it on a month-to-month basis for up to 24-months each at the City's sole discretion. Therefore, the City may extend the Agreement for up to four additional years to March 31, 2022.

HF&H assisted the City with conducting reference checks for Recology, Inc. by interviewing the primary solid waste contract managers for ten public agencies currently serviced by Recology including the cities of Atherton, Hillsborough, Menlo Park, San Francisco, San Mateo, Redwood City, Seattle, Burlingame, Cupertino, and Mountain View. A series of questions were asked, covering topics related to customer service,

program implementation, and their experience working with Recology. At the end of the interview, the solid waste contract managers were asked to rank the overall performance of Recology using the following scale: Exceptional, Above Expectations, Satisfactory, Below Expectations, or Unacceptable. Of the ten references, five of the agencies rated Recology to be "Exceptional," one said between "Above Expectations" and "Exceptional", and the remaining four agencies rated Recology to be "Above expectations."

A review of Recology's audited financial statement indicates that the company has over $700 million in annual revenue and is significantly larger than Crown Disposal, although Recology has relatively higher debt as a percentage of assets. A review of Recology's civil legal actions with government agencies for the past 10 years did not reveal any issues of major concern.

Based on the information provided by Recology and an evaluation of the company, the Ad Hoc Committee recommends that the City consent to the assignment of the Agreement to RLA for the remaining term of the Agreement, subject to certain conditions. The Ad Hoc Committee also expressed that it would be prudent for the City to begin work on a competitive Request for Proposal ("RFP") process in anticipation of the expiration of the initial franchise term in early 2018. A comprehensive RFP process can take 18 to 24 months from inception to start of service under a new contract, allowing sufficient time for a well-planned service provider transition.

The Solid Waste Ad Hoc Committee is recommending approval of the assignment to RLA subject to the following conditions:

1. ***Payment of the 1% assignment fee.***
   Per the Agreement, Crown Disposal is required to 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 proposed change of ownership, multiplied by the number of remaining years, or fraction thereof." Assuming a January 16, 2015 transaction close date, the 1% assignment fee is estimated at approximately $185,000. This amount will be confirmed and adjusted to reflect final accounting and the actual transaction closing date.

2. ***Crown Disposal's payment of $150,128 for overcharges.***
   An analysis of Crown Disposal's rate adjustments was recently completed by HF&H. The analysis indicated that a series of over and undercharges from FY2012-13 and FY2013-14 resulted in a net amount of $150,128 owed to the City. The analysis was forwarded to Crown Disposal by HF&H on September 11, 2014. Staff subsequently provided an electronic copy of the HF&H analysis to Crown Disposal on November 21, 2014 and requested payment. A formal written notice was sent to Crown Disposal on December 16, 2014 indicating the City will deduct the balance owed from Crown Disposal's November 2014 invoice. Recology has been informed that the City has contacted Crown Disposal regarding payment and that payment is required as a condition to the effectiveness of any consent to the assignment.

3. ***Integrate computer system with City system.***
   Due to City concerns related to network security, Crown Disposal did not implement the computer system compatibility requirements of Franchise Agreement Section 4.2.6, which requires that Crown Disposal electronically link

to the City's Customer Service system. RLA will be required to work with the City to implement such a system within 180 days of the assignment effective date. Failure to comply will result in liquidated damages of $100/day.

4. ***Guaranty of performance.***
   Recology, Inc. (the parent company) will be required to guarantee the performance of RLA, by executing the guarantee in the form attached to the Consent and First Amendment to the Franchise Agreement. In the event that RLA fails to perform, the City will call upon the Guarantor (Recology, Inc.) to perform in place of RLA.

5. ***Provide performance bond to City.***
   RLA will be required to deliver a performance bond in the amount of $500,000 in accordance with Section 8.5 of the Franchise Agreement.

6. ***Include a provision for the compost giveaway program.***
   Crown Disposal has been providing compost to residents of the City at no charge. Language will be added to the Agreement stating that this program will continue.

7. ***Remove staging containers from the City's Public Works Yard.***
   Crown Disposal has temporarily been using City property for staging containers. This property will no longer be available for such purposes. RLA must remove all containers and equipment from the City Yard located at 336 Foothill Road or any area of the 5.4 acre City property on Foothill Road between Third Street and Alden Drive as a condition of the consent to assignment becoming effective.

8. ***Revise language for Section 5.6 regarding extraordinary adjustments.***
   Revised language was sent to RLA on December 24, 2014 to preclude rate adjustment requests related to the price or availability of waste-to-energy facilities and changes in costs related to the availability of diversion credit for Green Waste used as landfill alternative daily cover (ADC). The revised language was to ensure the City would not be faced with additional costs that may result from recently passed legislation, such as the business organics program (AB 1826) and green waste used as Alternative Daily Cover (AB 1594). RLA has agreed to include the revised language in Section 5.6.

The City understands that all Crown Disposal employees were given the option to go through an interview process and be re-hired as Recology employees. Mr. Tim Fry, Crown's representative to the City, has declined to submit an application to become a Recology employee. Otherwise, Recology anticipates that staff serving the City will remain largely the same, including drivers and customer service representatives. The key staff members would continue to operate from the facility located in Sun Valley. Customer service and billing operations would remain at the same location. The current telephone number for customer service inquiries used by the City will also remain the same.

Once the assignment request is approved, Recology has indicated that all vehicles, containers, and employee uniforms used to service the City will be rebranded as Recology over time, following the closing date of the transaction with no interruption to service levels. Recology has indicated that it intends to close the sales transaction with Crown Disposal on January 16, 2015.

Below is the anticipated timeline for Recology's rebranding efforts. As part of the transition, the City will work closely with Recology to communicate the change of service provider to the community.

Recology Re-Branding Timeline	
Within 30 days from the closing of acquisition	Uniforms will be provided to employees, rebranded as Recology with the appropriate safety design.
Within 90 days from the closing of acquisition	Containers within the city will be labeled with Recology Los Angeles logo company information and colors. Containers that need to be replaced or repaired will be converted to Recology colors after repairs are completed.
Within 180 days from closing of acquisition	Collection vehicles serving the City will be re-branded with Recology Los Angeles company information and colors. Recology will work with its equipment vendors to conduct the re-painting, and will assure that backup vehicles will be in use to cover the routes of any collection vehicles out of commission during the re-branding efforts.

FISCAL IMPACT

The Agreement contains provisions regarding specific financial transactions that are to occur in the event of an assignment. Crown Disposal is required to pay all reasonable fees and investigation costs incurred by the City in considering a request for assignment. An advance payment of $50,000 is required, which the City has received. The consent to assignment also triggers payment of the 1% transfer fee to the City, which is currently estimated by Recology at approximately $185,000. This figure will be adjusted based on the transaction closing date. The Solid Waste Ad Hoc Committee recommends that this transfer fee be deposited in the City's General Fund. The assignment does not trigger any increase in fees to customers, and in fact, the conditions imposed on the assignment further limit the opportunity to impose increases on customers.

George Chavez
Approved By

Attachment 1

CONSENT TO ASSIGNMENT AND FIRST AMENDMENT TO FRANCHISE AGREEMENT FOR COMMERCIAL SOLID WASTE COLLECTION SERVICES AND RESIDENTIAL SOLID WASTE PROCESSING

This Consent to Assignment and First Amendment ("Consent and Amendment"), dated for reference January ____, 2015, is entered into by and between the City of Beverly Hills, a municipal corporation organized and existing under the laws of the State of California ("City") and Recology Los Angeles, a California corporation ("Company" or "RLA").

RECITALS

WHEREAS, City and Crown Disposal Co., Inc. ("Crown") entered into that certain Franchise Agreement for Commercial Solid Waste Collection Services and Residential Solid Waste Processing dated December 21, 2010 ("Franchise Agreement"); and

WHEREAS, Crown has notified City, by letter dated November 21, 2014, that Crown has entered into an agreement dated as of October 22, 2014 to sell all or substantially all of its assets to RLA, and that RLA would continue Crown's operations; and

WHEREAS, pursuant to Section 11.6 of the Franchise Agreement, no assignment or other transfer of the Franchise Agreement is permitted without the prior consent of City; and

WHEREAS, Crown has requested that City approve the assignment of the Franchise Agreement to RLA; and

WHEREAS, RLA is a subsidiary of Recology, Inc., a California corporation ("Recology, Inc."); and

WHEREAS, RLA and Recology, Inc. are wholly owned by the Recology Employee Stock Ownership Plan (ESOP); and

WHEREAS, pursuant to Section 11.6 of the Franchise Agreement, Crown and RLA provided certain documents to City, regarding the proposed transfer and the qualifications of the proposed transferee; and

WHEREAS, although certain of the information provided by RLA pertained to RLA, the majority of the information provide, particularly the financial information, pertained to Recology, Inc. and its operations; and

WHEREAS, City has reviewed the information submitted by Crown and RLA; and

WHEREAS, City is willing to approve the assignment of the Franchise Agreement to RLA only if Recology, Inc. guaranties the timely and full performance by RLA of its obligations, including the payment of moneys, pursuant to the Franchise Agreement; and

WHEREAS, City and Crown entered into that certain Residential Solid Waste Processing and Disposal Agreement attached to the Franchise Agreement as Exhibit 6, pursuant to which Crown agreed to make arrangements with Community Recycling and Resource Recovery, Inc. ("CRRR"), an affiliate of Crown, whereby CRRR would reserve capacity for and accept all solid waste generated by City's residential customers at agreed upon rates at the processing facility operated by CRRR in Sun Valley; and

WHEREAS, RLA has informed City that RLA is acquiring title to CRRR's Sun Valley processing facility; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals; Definitions. The foregoing recitals are true and correct, and incorporated into this Consent and Amendment by this reference. Capitalized terms used in this Consent and Amendment and not otherwise defined herein shall have the meaning assigned to them in the Franchise Agreement.

2. Consent to Assignment. On January __, 2015 the City Council of the City of Beverly Hills approved and consented to the assignment of the Franchise Agreement from Crown to RLA, subject to the provisions of this Consent and Amendment.

3. Effective Date. This Consent and Amendment shall become effective upon the occurrence of both (i) execution of this Consent and Amendment by City and RLA, and (ii) satisfaction of the following conditions:

a. RLA and Crown shall have executed and delivered to City an assignment agreement or other documentation reasonably acceptable to the City Attorney, documenting the assignment of the Franchise Agreement by Crown to RLA;

b. RLA shall have executed and delivered to City this Consent and Amendment;

c. RLA shall have delivered to City the Corporate Guaranty, substantially in the form attached to this Consent and Amendment as Exhibit A, executed by Recology, Inc. and acknowledged;

d. RLA shall have delivered to City the executed and acknowledged performance bond in compliance with Section 8.5 of the Franchise Agreement, substantially in the form attached to this Consent and Amendment as Exhibit B;

e. Crown shall have paid to City the transfer fee required by Section 11.6 of the Franchise Agreement;

f. Crown shall have paid to City the sum of $150,128, which is the net amount owed to City as a result of a series of over and undercharges from FY 2012-13 and FY2013-14; and

g. Crown shall have moved its container staging operations off of City Property, and caused the removal of all solid waste disposal containers stored at City's Public Works Yard for staging.

4. Assumption. By executing this Consent and Amendment, RLA represents and warrants to City that it accepts the assignment of the Franchise Agreement from Crown, and that it assumes all of the rights, interests, and obligations of the Company (as that term is defined in the Franchise Agreement) under the Franchise Agreement.

5. Compliance with Terms and Conditions of Franchise Agreement. RLA represents and warrants that as of the date of this Consent and Amendment, RLA is not aware of any act or failure to act by any party that would result in Company not being in full compliance with the terms and conditions of the Franchise Agreement.

6. Payments to Company. City agrees that it shall remit payment to Crown for the Crown billing to City for December 2014 services. Thereafter, City shall remit payments to RLA for RLA's billing to City for January 2015 services, and all future RLA invoices submitted to City. RLA shall cause a single combined invoice to be submitted to City for January 2015 services provided by RLA and Crown, and shall disburse to Crown any portion of the payment for January 2015 services to which Crown may be entitled.

7. Residential Solid Waste Processing and Disposal. City collects Solid Waste from single-family residences and from multi-family residences that use Carts. Pursuant to the Residential Solid Waste Processing and Disposal Agreement attached to the Franchise Agreement as Exhibit 6, City delivers residential Solid Waste to the material recovery facility located in Sun Valley, California ("Sun Valley MRF") that is owned by Community Recycling and Resource Recovery, Inc. ("CRRR"), an affiliate of Crown. RLA has informed City that it is in the process of acquiring title to the Sun Valley MRF from CRRR, concurrently with its acquisition of the assets of Crown.

The provisions of this Section 7 supplement Exhibit 6 to the Franchise Agreement. In the event of any conflict between Exhibit 6 and this Section 7, the provisions of this Section 7 shall control.

Company hereby agrees to reserve capacity for and accept at the Sun Valley MRF all Solid Waste generated by City's residential customers at the rates listed below. City will deliver the majority of the residential Solid Waste it collects to the Sun Valley MRF. City may also deliver Inert materials generated from City projects for processing at the Sun Valley MRF. The Sun Valley MRF must accept Solid Waste delivered from City Monday through Saturday, observing only New Year's Day, Thanksgiving Day and Christmas Day as holidays. City can terminate this Section 7 and Exhibit 6 to the Franchise Agreement upon 90-days' written notice to Company.

a. Mixed residential refuse and recyclables processing (without separate commingled Recycling Cart program).

Effective upon the effective date of this Consent and Amendment, Company will accept any and all mixed Refuse and Recyclables (exclusive of residential Green Waste and Inerts) collected from residential premises by City and delivered to the Sun Valley MRF at a gate rate of $44.65 per ton. Company will process all mixed Solid Waste to maximize recovery of Recyclable Materials, and dispose of residual waste. The guaranteed minimum recovery rate from this processing is 35% of the waste processed.

b. Residential Green Waste processing

Company will accept any and all of City's residential Green Waste at a gate rate of $35.44 per ton and divert Green Waste from landfill disposal.

c. Inerts Diversion

Company will accept any and all Inerts collected by City crews from water, streets and other public works projects at a gate rate of $22.63 per ton, and will divert 100% of Inerts from landfilling.

d. Rate Adjustments

Adjustments of the rates for services provided pursuant to this Section 7 shall be effective as of July 1, with the first permissible rate adjustment on July 1, 2015. Rates shall be adjusted in accordance with Exhibit 6 to the Franchise Agreement.

8. Compost Program. Company shall provide free compost to City for City's special events and City's community give back program at no cost. Compost shall be delivered on pallets in 20 pound bag units. Company shall cause the compost to be delivered within 48 hours of any request.

9. Personnel. Company shall make diligent good faith efforts to retain employees familiar with operations in the City of Beverly Hills. Company shall cause the liaison for service inquiries and the field supervisor to be located at the Sun Valley facility (9189 De Garmo Avenue, Sun Valley, CA).

10. Method of Adjustments. Exhibits 2A and 2B to the Franchise Agreement are hereby replaced in their entirety by Exhibit C to this Consent and Assignment.

11. Extraordinary Rate Adjustments. Section 5.6 of the Franchise Agreement is hereby revised to read as follows:

"5.6 Extraordinary Adjustments

Company may request an adjustment to maximum rates at times other than those specified in Section 5.4 in the event of extraordinary changes in the cost of providing service. Such extraordinary changes may not include changes in tipping fees for Refuse

Disposal, or Recyclable Material, Food Waste or Green Waste processing costs, changes in the market value of Recyclables from the values assumed by Company, *changes in costs related to the price or availability of waste-to-energy facilities, changes in costs related to the availability of diversion credit for Green Waste used as landfill alternative daily cover (ADC)*, inaccurate estimates by Company of its proposed cost of operations, the implementation or elimination of mandatory Recycling requirements by City or State (including requirements related to or developing from California Health and Safety Code Section 38500-38599), or the inability of Company to Dispose of any Solid Waste at a selected landfill, whether due to closure of the Disposal Site or otherwise. The only exception that would authorize an extraordinary adjustment based upon changes to the Refuse Disposal gate rate would be an increase in a direct per ton surcharge assessed at the Disposal Site by federal, state or local regulatory agencies after the Effective Date of this Agreement. Company is expected to comply with SCAQMD Rule 1193, and the Air Resource Board's proposed new emission standards for Refuse removal vehicles, as well as other federal, state and local laws and regulations that may be enacted during the term of this Agreement, for no additional compensation. No adjustment will be considered or approved as a result of unionization of the work force or a change in wage rates or employee benefits. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively.

For each request for an adjustment to the maximum rates under this section, Company must prepare a schedule documenting the extraordinary changes in costs. The request must be prepared in a form acceptable to City with support for assumptions made by Company in preparing the estimate. Contractor 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 will review Company's request and, in City's sole judgment, make the final determination on the appropriate amount of the adjustment, if any.

City may request a copy of Company's annual financial statements in connection with City's review of Company's rate adjustment request. City shall review Company's request and, in City's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in Company's total revenues and total cost of services when reviewing an extraordinary rate adjustment request."

12. Liquidated Damages. The parties acknowledge that subsection B of Section 10.3 of the Franchise Agreement requires that each party initial that subsection, and this was not done at the time of execution of the Franchise Agreement. In placing their initials in the blanks provided below, each party confirms the accuracy of the statements in subsections A and B of Section 10.3 and the fact that each party has had ample opportunity to consult with legal counsel and to obtain an explanation of the liquidated damages provisions in Section 10.3 prior to execution of this Consent and Amendment.

Company City:

Initial Here ____ ____ Initial Here ____ ____

13. Computer Compatibility; Liquidated Damages. Subsection B.6 of Section 10.3 of the Franchise Agreement is hereby revised to read as follows:

"6. Compliance with Computer Compatibility

For each day after June 30, 2015 that Company is not in compliance with Section 4.2.6, Computer Compatibility: $100 per day"

14. Notices. Pursuant to Section 11.15 of the Franchise Agreement, RLA hereby notifies City that the address for notices shall be:

15. Exhibits. Each of the exhibits identified in this Consent and Amendment are attached and incorporated herein by this reference.

16. Effect of Amendment. Except as set forth in this Amendment, the terms of the Franchise Agreement shall remain unchanged and in full force and effect.

TO EFFECTUATE THIS AMENDMENT, each of the parties has caused this Amendment to be executed by its authorized representative as of the date set forth below the authorized signature.

CITY:

CITY OF BEVERLY HILLS,
a municipal corporation

By: _____
LILI BOSSE, MAYOR

ATTEST:

_____ (seal)
BYRON POPE, City Clerk

COMPANY

By: _____
Name:
Title:

Date: _____

By: _____
Name:
Title:

Date: _____

APPROVED AS TO FORM:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

_____
JEFFREY C. KOLIN
City Manager

_____
GEORGE CHAVEZ
Director of Public Works Services

EXHIBIT A

CORPORATE GUARANTY

Guaranty

THIS GUARANTY ("Guaranty") is given as of the _____ day of _____ 2015, and is made with reference to the following facts and circumstances:

A. Recology Los Angeles ("Owner") is a corporation organized under the laws of the State of California. Recology, Inc. ("Guarantor") is a corporation organized under the laws of the State of California.

B. Owner and the City of Beverly Hills ("City") have negotiated a Consent and Amendment Agreement ("Consent and Amendment"), pursuant to which Owner has agreed to assume all of the obligations of "Company" under that certain Franchise Agreement between City of Beverly Hills and Crown Disposal Co., Inc. for Commercial Solid Waste Collection Services and Residential Solid Waste Processing dated as of December 21, 2010 ("Original Agreement"). The Original Agreement, as modified by the Consent and Amendment, is referred to herein as the "Agreement", and is attached hereto.

C. It is a requirement of the Agreement, and a condition to City entering into the Consent and Amendment, that Guarantor guarantee Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor irrevocably and unconditionally guarantees to City the complete and timely performance by Owner of each and every term of the Agreement that Owner is required to perform. If Owner fails to perform any term of the Agreement, Guarantor will promptly and fully perform it in the place of the Owner, or cause it to be performed. Guarantor also guarantees payment to City of any damages, costs, or expenses that might become recoverable by City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor under this Guaranty are continuing, unconditional, and unlimited, and, with respect to any payment obligation of Owner under the Agreement, constitute a guarantee of payment and not of collection, and are not conditional upon the validity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations under this Guaranty, the Guarantor will 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.** Guarantor has no right to terminate this Guaranty, or to be released, relieved, exonerated or discharged from its obligations under this Guaranty for any reason, including, without limitation: (a) the insolvency, bankruptcy, reorganization or cessation of

existence of the Owner; (b) 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; (c) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder, or the impairment or suspension of any of City's rights or remedies against the Owner; or (d) any merger or consolidation of the Owner with any other entity, or any sale, lease, or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor waives the rights and benefits under California Civil Code Section 2819.

The Guarantor waives all benefits and defenses under California Civil Code Sections 2846, 2849, and 2850, including without limitation, the right to require City to (a) proceed against Owner; (b) proceed against or exhaust any security or collateral City may now or later hold; or (c) pursue any other right or remedy for Guarantor's benefit. Guarantor agrees that 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 City may now or later hold. City may, in its sole discretion, exercise all rights and remedies available to it against Owner, or any other guarantor or pledgor, without impairing City's rights and remedies in enforcing this Guaranty.

The Guarantor now waives, and agrees to waive at any future time, at the request of City to the extent now or then permitted by applicable law, all rights that the Guarantor may have, or which at any later time may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following will not affect the liability of the Guarantor: (a) at any time or from time to time, without notice to the Guarantor, performance or compliance with the Agreement is waived; (b) any indemnification with respect to Owner's obligations under the Agreement, or any security therefore, is released or exchanged in whole or in part; or (c) any assignment of the Agreement is effected that does not require City's approval.

The Guarantor 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 under this Guaranty are paid or performed, Guarantor's obligations will 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 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 will continue in full force and effect until all of the terms of the Agreement have been fully performed or otherwise discharged. Guarantor will remain fully responsible under this Guaranty without regard to the acceptance by City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor will not be released from its obligations under this Guaranty so long as there is any claim by City against Owner arising out of the

Agreement based on Owner's failure to perform, which failure has not been settled or discharged.

5. **No Waivers.** No delay by City in exercising any rights under this Guaranty, nor City's failure to exercise those rights, will operate as a waiver of those rights. No notice to or demand on Guarantor will be a waiver of any obligation of Guarantor, or right of City, to take other or further action without notice or demand. No modification or waiver of any provisions of this Guaranty will be effective unless it is in writing and signed by City and by Guarantor, nor will any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorneys' Fees.** If Guarantor breaches its obligations under this Guaranty Guarantor will pay reasonable attorneys' fees, and all other reasonable costs and expenses that are incurred by City in enforcing this Guaranty, or that are incurred 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 under this Guaranty.

7. **Governing Law: Jurisdiction.** This Guaranty is and will be deemed to be a contract entered into under the laws of the State of California and will 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 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 those courts. Guarantor appoints the following person as its agent for service of process in California:

_____
_____
_____
_____

With a copy by certified mail to:

_____
_____
_____
_____

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will not affect the remaining portions of this Guaranty, which portions are severable and will continue in full force and effect.

9. **Binding On Successors.** This Guaranty inures to the benefit of City and its successors and shall be binding upon Guarantor and its successors, including any transferee of substantially all of Guarantor's assets, and its shareholders in the event of Guarantor's dissolution or insolvency.

10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that the execution of this Guaranty has been authorized by all

necessary action under its articles 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 City: City Manager
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210

with a copy to the City Attorney at the same address.

To the Guarantor: _____
_____
_____

[NAME OF GUARANTOR]

By: _____
Authorized Representative

Title: _____
Date: _____

EXHIBIT B

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Recology Los Angeles ("Principal") and the City of Beverly Hills ("City") have negotiated a Consent and Amendment Agreement ("Consent and Amendment"), pursuant to which Principal has agreed to assume all of the obligations of "Company" under that certain Franchise Agreement between City of Beverly Hills and Crown Disposal Co., Inc. for Commercial Solid Waste Collection Services and Residential Solid Waste Processing dated as of December 21, 2010 ("Original Agreement"). The Original Agreement, as modified by the Consent and Amendment, is referred to herein as the "Agreement"; and

WHEREAS, the Agreement is incorporated herein by this reference; and

WHEREAS, the Principal is required under the terms of the Agreement to furnish a bond for its faithful performance;

NOW, THEREFORE, we, Principal and _____, as Surety, are held and firmly bound unto City in the penal sum of Five Hundred Thousand Dollars ($500,000), lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation will become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, will in all things stand to, abide by, well and truly keep and perform the covenants, conditions, and provisions in said exclusive franchise and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and will indemnify and save harmless City, its officers, agents, and employees, as therein stipulated; otherwise, this obligation will be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified, costs and reasonable expenses and fees will be included, including reasonable attorneys' fees incurred by City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the exclusive franchise, the work to be performed thereunder, or the specifications accompanying the exclusive franchise will in any manner affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the exclusive franchise, the work, or the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the above named Principal and Surety on _____, 2015.

Note: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment.

_____
(Type name of Principal)

_____
_____
_____
(Type Address of Principal)

By: _____
(Signature of authorized officer)

_____
(Title of officer)

_____
(Type name of Surety)

By: _____
(Signature of authorized officer)

_____
(Title of officer)

APPROVED AS TO FORM:

_____
CITY ATTORNEY

EXHIBIT C

RATE ADJUSTMENT EXHIBITS

EXHIBIT 2A

FY 2014-15 Commercial Bin Rate Adjustment
Example Calculation

Step One: Calculate percentage change in indices

Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change in Index ((Column B/ Column A) -1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C x Column D)
Labor	(1)	116.5	118.9	2.1%	100%	2.1%
Fuel	(2)	117.9	153.9	30.5%	100%	30.5%
Equipment	(3)	134.6	136.8	1.6%	100%	1.6%
Disposal	(4)	N/A	N/A	1.5%	100%	1.5%
All Other	(5)	229.594	232.957	1.5%	50%	0.8%

Step Two: Calculate weighted percentage change to rates

Adjustment Factor	F Percent Change for Rate Adjustment (From Column E)	G Weighting (6)	H Weighted Percent Change (Column F x Column G)
Labor	2.1%	23.5%	0.5%
Fuel	30.5%	3.1%	0.9%
Equipment	1.6%	20.5%	0.3%
Disposal	1.5%	33.9%	0.5%
All Other	0.8%	19.0%	0.2%
Total	n/a	100.0%	2.4%

Step Three: Apply percentage change to rates, up to 5%

Rate Category	I Current Monthly Customer Rate	J Total Weighted Percentage Change (from Column H or 5%, whichever is lower)	K Rate Increase or Decrease (Column I x Column J)	L Adjusted Monthly Rate (Column I + Column K)
3-yd bin, 1x week	$ 71.01	2.4%	$ 1.70	$ 72.71
3-yd bin, 2x week	$ 117.15	2.4%	$ 2.81	$ 119.96
3-yd bin, 3x week	$ 161.18	2.4%	$ 3.87	$ 165.05
3-yd bin, 4x week	$ 203.08	2.4%	$ 4.87	$ 207.95
3-yd bin, 5x week	$ 244.26	2.4%	$ 5.86	$ 250.12
3-yd bin, 6x week	$ 284.02	2.4%	$ 6.82	$ 290.84
3-yd bin, 7x week	$ 382.71	2.4%	$ 9.19	$ 391.90

Step Four: Calculate new weightings for future rate adjustments

Adjustment Factor	M Old Index Weighting (From Column G)	N Percent Change in Index for Rate Adjustment (from Column E)	O Adjusted by Change (Column M x (1+Column N))	P New Index Weighting (Column O Row/ Column O Total)
Labor	23.5%	2.1%	24.0%	23.4%
Fuel	3.1%	30.5%	4.0%	3.9%
Equipment	20.5%	1.6%	20.8%	20.3%
Disposal	33.9%	1.5%	34.4%	33.6%
All Other	19.0%	0.8%	19.2%	18.8%
Total	100.0%		102.4%	100.0%

(1) Employment Cost Index CIU 2010005200000I, Total Compensation, Private Industry, Index number, Transportation and material moving*

(2) Producer Price Index WPU 0531, Fuels and related products and power, natural gas*

(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing*

(4) Disposal costs including processing were adjusted by 1.5% as requested by Crown on its rate adjustment request for FY 2015. This amount equals the maximum CPI cap as per Section 5.5 of the Agreement.

(5) Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average*

(6) The first rate adjustment is based upon percentage weighting in Section 5 of the Agreement. After the first rate adjustment, this column comes from Column P of the previous year's rate adjustment worksheet.

* See Exhibit 2C of the Franchise Agreement.

EXHIBIT 2B

FY 2014-15 Roll-off Box Rate Adjustment

Example Calculation

Step One: Calculate percentage change in indices

Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change in Index ((Column B/ Column A) -1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C x Column D)
Service Component (pull rate)						
Labor	(1)	116.5	118.9	2.1%	100%	2.1%
Fuel	(2)	117.9	153.9	30.5%	100%	30.5%
Equipment	(3)	134.6	136.8	1.6%	100%	1.6%
All Other	(4)	229.594	232.957	1.5%	50%	0.8%
Disposal Component	(5)	N/A	N/A	1.5%	100%	1.5%

Step Two: Calculate weighted percentage change to rates

Adjustment Factor	F Percent Change for Rate Adjustment (From Column E)	G Weighting (6)	H Weighted Percent Change (Column F x Column G)
Service Component			
Labor	2.1%	35.2%	0.7%
Fuel	30.5%	5.0%	1.5%
Equipment	1.6%	31.3%	0.5%
All Other	0.8%	28.5%	0.2%
Total Service Component (Pull Rate)	n/a	100.0%	2.9%
Disposal Component (per ton gate rate)	1.5%	100.0%	1.5%

Step Three: Apply percentage change to rates, up to 5%

Rate Category	I Current Monthly Customer Rate	J Total Weighted Percentage Change (from Column H or 5%, whichever is lower)	K Rate Increase or Decrease (Column I x Column J)	L Adjusted Monthly Rate (Column I + Column K)
Service Component (Pull Rate)	$ 143.21	2.9%	$ 4.15	$ 147.36
Disposal Component (per ton gate rate for mixed waste processing)	$ 36.20	1.5%	$ 0.54	$ 36.74

Step Four: Calculate new weightings for future rate adjustments

Adjustment Factor	M Old Index Weighting (From Column G)	N Percent Change in Index for Rate Adjustment (from Column E)	O Adjusted by Change (Column M x (1+Column N))	P New Index Weighting (Column O Row/ Column O Total)
Labor	35.2%	2.1%	35.9%	34.9%
Fuel	5.0%	30.5%	6.5%	6.3%
Equipment	31.3%	1.6%	31.8%	30.9%
All Other	28.5%	0.8%	28.7%	27.9%
Total	100.0%		102.9%	100.0%

(1) Employment Cost Index CIU 2010005200000I, Total Compensation, Private Industry, Index number, Transportation and material moving*

(2) Producer Price Index WPU 0531, Fuels and related products and power, natural gas*

(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing*

(4) Consumer Price Index for All Urban Consumers, all items Index (CPI-U) – U.S. city average*

(5) Disposal costs including processing were adjusted by 1.5% as requested by Crown on its rate adjustment request for FY 2015. This amount equals the maximum CPI cap as per Section 5.5 of the Agreement.

(6) The first rate adjustment is based upon percentage weighting in Section 5 of the Agreement. After the first rate adjustment, this column comes from Column P of the previous year's rate adjustment worksheet.

* See Exhibit 2C of the Franchise Agreement.

Attachment 2

Recology
Los Angeles
WASTE ZERO

December 15, 2014

George Chavez
Director, Department t of Public Works Services
345 Foothill Rd.
Beverly Hills, CA 90210

Re: Response to Letter Concerning Assignment to Recology of the Franchise Agreement between the City of Beverly Hills and Crown Disposal Company for Commercial Solid Waste Collection and Residential Solid Waste Processing

To Mr. George Chavez,

Thank you for your inquiry dated December 10, 2014, regarding Crown Disposal Company's (Crown) request to assign the City of Beverly Hill's (City) Franchise Agreement for Commercial Solid Waste Collection and Residential Solid Waste Processing (Agreement) to Recology Los Angeles (Recology).

As previously discussed, Recology is acquiring substantially all of the assets of Crown (the Transaction). This letter is to provide the City with the information requested in your December 10th letter.

Response to Part 1: Background information to be provided by Recology

1. **Identify 10 public agencies to which Recology currently provides services that are most similar to the services provided in the City of Beverly Hills. For each agency, please identify:**
   The name of the agency
   Population served
   Name, title, and telephone number of the agency's primary contract manager
   A brief description of the services provided (e.g. residential collection, commercial collection, processing, etc.)
   The contract starts and end dates

City of Atherton	
Population served (total accounts):	2,366
Contact:	George Rodericks Atherton City Manager Telephone: (650) 752-0500
Services Provided:	MSW, Recycling, Food Scraps, and Yard Trimmings collection for single-family, multi-family, and commercial.
Contract start and end:	January 1, 2011 – December 31, 2021

City of Hillsborough	
Population served (total accounts):	3,668
Contact:	Randy Schwartz Hillsborough City Manager Telephone: (650) 375.7412
Services Provided:	MSW, Recycling, Food Scraps, and Yard Trimmings collection for single-family, multi-family, and commercial.
Contract start and end:	January 1, 2011 – December 31, 2021

City of Menlo Park	
Population served (total accounts):	9,013
Contact:	Alex McIntyre Menlo Park City Manager Telephone: (650) 330.6610
Services Provided:	MSW, Recycling, Food Scraps, and Yard Trimmings collection for single-family, multi-family, and commercial.
Contract start and end:	January 1, 2011 – December 31, 2021

City and County of San Francisco	
Population served (total accounts):	170,807
Contact:	Robert Haley Zero Waste Manager Telephone: (415) 355-3752
Services Provided:	MSW, recyclables, organics, bulky items, e-waste, and hazardous waste collection and processing services for single-family, multi-family, and commercial.
Contract start and end:	Franchise ordinance since 1920

City of San Mateo	
Population served (total accounts):	22,919
Contact:	Larry Patterson City Manager of San Mateo Telephone: (650) 522-7303
Services Provided:	MSW, Recycling, Food Scraps, and Yard Trimmings collection for single-family, multi-family, and commercial.
Contract start and end:	January 1, 2011 – December 31, 2021

City of Redwood City	
Population served (total accounts):	19,420
Contact:	Robert Bell City Manager of Redwood City Telephone: (650) 780-7000
Services Provided:	MSW, Recycling, Food Scraps, and Yard Trimmings collection for single-family, multi-family, and commercial.
Contract start and end:	January 1, 2011 – December 31, 2021

City of Seattle, WA	
Population served (total accounts):	67,824
Contact:	Ray Hoffman, Director Seattle Public Utilities Telephone: (206) 684-5852
Services Provided:	MSW and Recycling collection for half of the City of Seattle commercial and residential population.
Contract start and end:	March 30, 2009 – March 31, 2017 (with two optional two-year extensions)

City of Burlingame	
Population served (total accounts):	8.011
Contact:	Lisa Goldman City Manager of Burlingame Telephone: (650) 558-7204
Services Provided:	MSW, Recycling, Food Scraps, and Yard Trimmings collection for single-family, multi-family, and commercial.
Contract start and end:	January 1, 2011 – December 31, 2021

City of Cupertino	
Population served (total accounts):	14,445
Contact:	Cheri Donnelly Environmental Programs Manager Telephone: (408) 777-3242
Services Provided:	MSW, Recycling, Food Scraps, and Yard Trimmings collection for single-family, multi-family, and commercial.
Contract start and end:	1950s - December 31, 2019

City of Mountain View	
Population served (total accounts):	13,376
Contact:	Lori Topley Solid Waste Program Manager (650) 903-6488
Services Provided:	MSW, Recycling, Commercial Food Scraps, and Yard Trimmings collection.
Contract start and end:	1930s – October 31, 2021

2. **Describe all civil legal actions with government agencies now pending or which have occurred in the past 10 years with a) potential liability or actual damages greater than $50,000 or b) involved a request for injunction or specific performance or may be otherwise considered significant, and all criminal legal actions now pending or that have occurred in the past 20 years against:**

   i. **Any personnel that will be involved with the Beverly Hills contract**
   ii. **The owners and officers of the company**
   iii. **Recology or any parent or affiliated company, past or present (including legal actions involving Norcal)**

Recology Inc. is the parent company to numerous subsidiaries providing resource recovery services in California, Oregon, Washington and Nevada. The company carries a broad range of insurance coverages adequate to protect its assets. Recology employs aggressive safety programs to prevent accidents and mitigate costs. From time to time, in the normal course of business, Recology and its subsidiaries are subject to various insurance claims and/or litigation. Recology's policy and business practice is to respond to and resolve these allegations in a timely manner.

The following is a summary of civil legal actions with government agencies and criminal legal actions meeting the specifications outlined above. The information below is accurate as of December 12, 2014.

Date Filed	Description	Status
10/9/2014	Enforcement action by the Central Valley Regional Water Quality Control Board, at Recology Hay Road related to compost and landfill operations.	Facility improvements conducted; no monetary penalties levied.
8/29/2013	Enforcement action by the Regional Water Quality Control Board, Central Valley Region at Recology Yuba Sutter related to compost operations and closed landfill management.	Facility improvements conducted; no monetary penalties levied.
4/26/2013	Enforcement action by the North Coast Regional Water Quality Control Board, jointly to Humboldt County Waste Management Authority and Recology Humboldt County regarding cleanup of legacy burn ash site impacting nearby creek.	Burn ash debris removed from site; no monetary penalties levied.
9/27/2012	Enforcement action brought on by the Solano County DRM to Recology Vallejo related to delayed reporting.	HMBP updated and additional training conducted; $6,930 in monetary penalties paid.
3/25/2011	Enforcement action brought on by the Solano County LEA at Jepson Prairie Organics, mutually developed an agreement to minimize odors at a compost facility.	Implemented additional odor mitigation measures; $20,000 in monetary penalties paid.
6/1/2007	People of the State of California v. Ronald R. Gonzales, Joseph August Guerra III, and Norcal Waste Systems, Inc.	Resolved
1/1/2006	Norcal Waste Systems of San Jose Notice of Assessment.	Resolved
7/1/2000	County of San Bernardino; Inland Empire Public Facilities Corporation; Inland Empire Solid Waste Financing Authority; San Bernardino County Financing Authority; San Bernardino County Flood Control District and William Randolph v. James J. Hlawek: Harry M. Mays; Bio-Reclamation Technologies, Inc., a California corporation; Business Consultants, Inc., a Delaware corporation; Ronald R. Canham; Canham & Associates, Inc., an Arizona corporation; Dionysus Properties, a	Resolved; see response to question 3 below

Date Filed	Description	Status
	California limited liability company; Gerald R. Eaves; Hinshaw & Culbertson, a Minnesota partnership; James E. Iverson; John R. Larson; Sol Levin; Williams S. McCook; Miller & Schroeder Financial, Inc., a Minnesota corporation; Norcal Solid Waste Systems, Inc., a California corporation; Norcal/San Bernardino, Inc., a California corporation; Oakridge Group Corporation, a Nevada corporation formerly known as Oakridge Corporation; Thomas F. O'Donnell; SHL Associates, Ltd., a New York corporation; Richard E. Tisdale; Kenneth James Walsh; Michael Welsh; and Does 1 through 1-180.	

3. **Describe and address the circumstances, events, settlement, and outcome of the San Bernardino County litigation involving Norcal Waste Systems, and confirm whether any employees associated with those events remain employed by the company. While this event occurred in the 1990's, it may be raised by the Council or members of the public and full and complete advance disclosure is important.**

On June 8, 2000, the County of San Bernardino (the County), its County Administrative Officer William Randolph (Randolph), and certain County-related entities (collectively, the County Parties) filed a complaint (the Complaint) against Norcal Waste Systems, Inc. and Norcal/San Bernardino, Inc. (collectively, the Norcal Parties) as defendants together with 21 other entities and individuals, including Harry M. Mays and certain of his affiliated companies, James J. Hlawek, and Kenneth James Walsh, as well as certain other present or former County officials.

The Complaint asserted as to the Norcal Parties, together with, in most claims, Messrs. Walsh, Mays, Hlawek and Bio-Reclamation Technologies, Inc., a company affiliated with Mr. Mays, claims for breach of fiduciary duty and fraud; alleged violations of California Government Code Sections 1090 and 1092, California Government Code Sections 87100, 87103 and 91003 (the Political Reform Act), California Business and Professions Code Sections 17200 and 17203 (the Unfair Competition Law); and California Government Code Sections 12650 et seq. (the False Claims Act); and a claim for unjust enrichment and constructive trust. Each of these claims was brought by the County alone, with the exception of the Political Reform Act and Unfair Competition Law claims, which were also brought by Randolph.

The Complaint alleged, inter alia, a conspiracy to influence and reward Mr. Hlawek in connection with procuring the 1995 waste management contract between Norcal Waste Systems and the County (1995 Contract), obtaining solid waste management work connected to the 1995 Contract, and causing the County to buy out certain existing contracts. The Complaint sought damages, restitution, disgorgement of profits, civil penalties, punitive damages and injunctive and declaratory relief.

The Norcal Parties denied that they had engaged in any wrongdoing of any kind and, in particular, that they had any liability in connection with the matter.

On July 25, 2000, the Norcal Parties and the County Parties entered into a settlement agreement. Pursuant to the settlement, the Norcal Parties made a payment to the County in the amount of $6,561,000.

On July 27, 2000, the Court approved the settlement agreement and entered judgment in accordance with the provisions of the settlement agreement. Effective as of August 4, 2000, the Court entered a dismissal with prejudice of the County Parties' claims against the Norcal Parties.

Kenneth James Walsh was terminated by Norcal Waste Systems on August 27, 1999.

4. **Provide the company's calculation and supporting computations of the amount due to the City for the I% assignment fee on the unexpired term of the agreement per Section I I.6D(I).**

Recology is collaborating with Crown to provide an answer to this question, and anticipates the response will be available by Wednesday, December 16. Recology will provide this to the City in a separate letter as soon as its available.

5. **Provide Crown's audited financial statement for the most recently completed fiscal year so it can be used as a basis of comparison to Recology.**

Recology is collaborating with Crown to receive a copy of their most recently available financial statements, and anticipates the response will be available by Wednesday, December 16. Recology will provide the financial statements to the City alongside the response to Question 4 above.

6. **Identify the public agency in California that is geographically closest to Beverly Hills that is currently served by Recology.**

Recology Environmental Solutions (a wholly-owned subsidiary of Recology Inc.) currently manages the Bakersfield Metropolitan (BENA) Sanitary Landfill, which is owned by the County of Kern Waste Management Department. The site is located 126 miles north of Los Angeles in Bakersfield, Kern County, California.

Recology Environmental Solutions began operations at the landfill in 2004. The current contract expires in August of 2015. Under the current contract, Recology Environmental Solutions operates the solid waste disposal portion of the landfill's operations.

The site comprises 2,285 acres, 229 of which are permitted as a Class III Landfill. The landfill is open to commercial waste haulers and can accept up to 4,500 tons of municipal solid waste per day in a 7-day week. The facility is permitted to accept mixed municipal solid waste, construction & demolition (C&D) materials, and industrial wastes.

7. **Provide for Crown and Recology their California Workers' Compensation Experience Modification Ratings for the past three years. (The Experience Modification is expressed as a percentage).**

Recology Inc.'s Experience Modification Rate (EMR) for California operations during the last three years is as follows:

Year	EMR
2013	107.1%
2012	76.9%
2011	102.7%

Recology Inc. and its operating companies place the highest priority on the health and safety of its employee-owners, contractors, and the public.

To support this goal, Recology's Safety & Risk Management department follows a five-year Strategic Safety Management Plan aimed at reducing the frequency and severity of workers' compensation (WC) and auto/general liability (AL/GL) related accidents. The new Recology Los Angeles operations will likewise follow this Management Plan.

Recology's Safety Plan incorporates the following elements:

- Maintaining a comprehensive Illness and Injury Prevention Plan (IIPP) for each operation (including Recology Los Angeles). The IIPP is based on a consistent template developed by Recology Inc.'s Director of Safety and Risk Management to ensure that all vital safety procedures are included.
- Completing Safety Management Reports designed to show WC and AL/GL accident experience and cost YTD compared to LYTD by Recology operating company, group, and overall company.
- Maintaining a Safety & Risk Management Department at the corporate level that can ensure the allocation of safety resources as appropriate. Recology Los Angeles operations will have an on-site Safety Manager, reporting directly to Recology Inc.'s Director of Safety & Risk Management.
- Incorporating Safety Technology into everyday operations, including:
    - Mobile Epiphany, a mobile platform to document driver safety observations. This data collection tool helps ensure timely and consistent safety observations, and also trends from aggregate safety observations.
    - MSDSOnline, an automated electronic material safety data sheet (MSDS) that helps Recology operations maintain up-to-date data and recommended personal protective equipment.
    - DriveCam, an in-vehicle camera that helps identify at-risk diver behavior so appropriate training can be provided.
- Conducting consistent employee trainings, ensuring drivers and equipment operators are well-prepared to conduct their day-to-day operations in a safe and customer-focused manner.
- Maintaining a Safety Training Library, offering safety training programs that are uniformly available for all Recology operating companies via our intranet Safety Training Library.

Response to Part 2: Questions about the proposed transaction and how it may affect the City

1. **Identify the following contacts for services provided to the City of Beverly Hills after assignment of the Agreement to Recology, including their office location, and briefly summarize their experience:**
   - **The day-to-day liaison for service inquiries.**
   - **The field supervisor per Section 3.7.5.F of the Agreement.**
   - **The primary contract manager responsible for overall performance of the Beverly Hills services.**
   - **The manager responsible for negotiating contract amendments.**

   Recology anticipates that staff serving the City will remain largely the same, including drivers and customer service representatives. These key staff members would remain located at the Sun Valley facility (the company maintenance and administration location) at 9189 De Garmo Avenue, Sun Valley, CA 91352.

   Recology anticipates that the following key individuals will service the City:
   - Day-to-day liaison for service inquiries: Kim Sandvig
   - Field supervison: Jason Hammer
   - Primary contract manager and negotiation point for contract amendments: Joe Matz

   Kim Sandvig
   Customer Service
   Kim Sandvig has over ten years of professional experience, and has served as an Executive Assistant at Crown since 2013. Kim has held various responsibilities, including managing Crown's accounts with NBC Universal and the Walt Disney Company, roll-off bids and contracts, tracking and developing recycling/diversion reports, supervising the sales support team, and processing rebates for customers.

   In Customer Service for Recology Los Angeles, Kim would work to ensure a smooth, seamless experience for each City of Beverly Hills customer. Kim would oversee the customer service representatives and assist with escalated concerns.

   Prior to her role at Crown, Kim served as an Instructional Aide with Simi Unified School District for ten years, working with children with Autism and other developmental disabilities. Kim has completed coursework through California State University Northridge and Pierce College in Woodland Hills.

   Jason Hammer
   Field Supervision
   Jason Hammer has supervised field routes for Crown's Beverly Hills operations since November of 2006, and would continue to serve in that capacity under Recology. Jason started with Crown Disposal as a roll off driver almost 17 years ago, and transitioned into dispatch operations.

   In April of 2004, Jason helped Crown implement the Beverly Hills Franchise transition, helping to deliver bins, respond to work order requests, and dispatch drivers. His knowledge and experience will be valuable to maintaining consistency in day-to-day operations for Beverly Hills.

Joe Matz
General Manager
As the General Manager, Joe Matz will plan, direct, and evaluate all aspects of Recology Los Angeles's programs in the City of Beverly Hills to ensure safe, efficient, innovative, high-quality, and ethical service to all customers.

Joe brings over 30 years of industry experience, including positions as general manager, operations manager, and materials recovery facility manager. He has spent the last 20 years at Recology. Joe is experienced in running effective public education programs and public event services.

Previously, Joe served as Vice President/General Manager of Recology Butte Colusa Counties, Recology Yuba Sutter Counties, where he directed the operation of a variety of recyclables, organics, and solid waste management services. He was responsible for ensuring efficiency and quality service relative to materials recovery, recycling, residential, commercial and industrial waste collection, C&D collection and compactor service for the residents, businesses and public entities within Butte County. In addition, Joe managed the operation of the transfer stations, Household Hazardous Waste facilities, and Buyback Centers operated by Norcal/Butte in Butte County.

2. **Crown representative Tim Fry has been the primary point of contact for substantive contract matters in the past. Will he remain with the company and if so in what role? Will the drivers and other current staff currently servicing Beverly Hills be the same, and if not, how will new personnel be recruited and trained?**

Tim Fry declined to submit and application to become a Recology employee. Otherwise, current staffing is expected to largely remain the same, including all drivers and customer service representatives helping to service the City today.

As noted in Section 2, Question 1, Joe Matz, General Manager, would serve as the primary point of contact for substantive contract matters for the City of Beverly Hills if the Agreement is assigned to Recology.

3. **We understand the acquisition represents an asset purchase. Are there any assets that are not being purchased that are currently used directly or indirectly to service Beverly Hills? Identify any new or additional assets that will be used to service Beverly Hills.**

The necessary assets Recology will need to continue to service the City will be acquired in the Transaction. No new or additional assets are anticipated to be purchased to service the City.

4. **Will Crown cease to exist in any format after the acquisition?**

Crown has not informed us of whether it intends to wind down and dissolve Crown following the closing of the Transaction.

However, Recology is acquiring the name "Crown Disposal" in connection with the Transaction, and Crown must change its name with the California secretary of state promptly following the closing of the Transaction.

5. **Will there be a change to the location and/or telephone number for customer service inquiries or billing operations? What functions, if any, will be moved to Recology's administrative offices in Northern California?**

Customer service and billing operations will remain at their current location at 9189 De Garmo Avenue in Sun Valley, CA. Accounts payable functions will be consolidated at Recology's offices in Sacramento, CA.

The current telephone number for customer service inquiries used by the City will remain the same.

6. **Your letter of November 25, 2014 indicates a new entity, Recology of Los Angeles, will be created. Please confirm that the financial guaranty will be provided by the parent company.**

Yes; Recology confirms that the financial guaranty will be provided by the parent company, Recology Inc.

7. **Crown has not implemented the computer system compatibility requirements of Section 4.2.6 to link electronically to the City's customer service system. Section 10.3.B.6 contains a penalty of $100 per day for failure to comply after April 1, 2012. Please confirm how and when Recology will implement this requirement of the Agreement.**

If assigned the Agreement, Recology will begin working to construct this interface between the City's customer service system and Recology's system. To implement the compatibility requirements of Section 4.2.6, Recology would need to understand the specifications of the City's customer service system, as well as the interface needs. Accordingly, Recology would like to establish as quickly as possible:

- A partnership with the City to make certain City technical staff available to create the specifications and complete the interface with Recology.
- Coordination with the City to establish a timeframe to implement the interface. Recology would work to implement as quickly as possible.

Recology has experience constructing custom interfaces with municipalities to meet communication needs, and can work with the City to meet the compatibility requirements of Section 4.2.6. Recology has worked with the following municipal clients:

- City and County of San Francisco (CCSF)
- South Bayside Waste Management Authority (SBWMA)
- City of Redwood City
- City of Mountain View

8. **Describe how vehicles, containers, and employee uniforms used in providing services to Beverly Hills will be identified (e.g. Crown or Recology) and when any changes will be made.**

All vehicles, containers, and employee uniforms used to provide service in Beverly Hills will be rebranded as Recology over a period of time, following the closing of the Transaction. Below is an anticipated timeline for the re-branding efforts:

Recology Re-Branding Timeline	
Within 30 days from the closing of the acquisition	Uniforms will be provided to employees, re-branded as Recology with the appropriate safety design.
Within 90 days from the closing of the acquisition	Containers within the City will be labeled with Recology Los Angeles logo and company information. Please note that containers that need to be replaced or repaired will be converted to Recology colors after repairs are completed.
Within 180 days from the closing of the acquisition	Collection vehicles serving the City will be re-branded with Recology Los Angeles company information and colors. Recology will work with its equipment vendors to conduct the re-painting, and will assure that backup vehicles will be in use to cover the routes of any collection vehicles out of commission during the re-branding efforts.

9. **Does Recology contemplate requesting any changes in the terms of the Agreement, either at this time or prior to its expiration? If yes, please describe.**

   Recology does not anticipate any changes to the terms of the Agreement at this time.

10. **Crown has temporarily been using City property for staging containers. That property will no longer be available for such purposes and the existing containers will need to be relocated to private property. Describe where Recology will move the container staging operation.**

    Recology will move the container staging operations to the Sun Valley facility (the company maintenance and administration location) at 9189 De Garmo Avenue, Sun Valley, CA 91352.

    If possible, Recology would like to discuss the possibility of continuing to use City property to conduct container staging operations, which would help minimize vehicle miles traveled. Recology would like to work with the City to identify the appropriate timing to move the container staging operations.

11. **We understand Recology plans on building an enclosed facility at the existing Community Recycling MRF site. Please describe the construction plans and timing, and confirm that the City of Beverly Hills vehicles that dump at the facility will not be impacted in terms of turnaround time at the facility, and that current services will not be impacted.**

    Recology anticipates that the enclosure will be completed by the fourth quarter of 2016. The construction will be accomplished in stages to minimize the impact on operations. Recology's goal is to ensure vehicle turnaround time and current services provided at the facility are not interrupted during the enclosure construction.

12. **Please confirm that Recology will continue to provide free compost to Beverly Hills customers as currently provided by Crown. This arrangement is not described in the current franchise Agreement.**

Confirmed; Recology can continue to provide free compost to the City, and is open to including this requirement in the Agreement.

Keeping with Recology goal to achieve a world without waste, Recology operating companies commonly donate compost to the communities they serve. Each year, Recology conducts Compost Giveaways in the City of San Francisco, providing residents up to ten pounds of compost for their gardens.

This year in the Los Angeles area, Recology has already donated compost to:

- Attendees of the 2014 Central Avenue Jazz Fest. At the event, Recology employees distributed bags of nutrient-rich compost, chive seed packets, and composting tips. Over 400 pounds of compost were distributed to approximately 800 event attendees.
- The Loyola Marymount University LIONS garden, a sustainable garden created by LMU students. Recology donated 600 pounds of compost to help the garden continue its mission.

Recology looks forward to partnering with the City of Beverly Hills to identify and meet its composting needs.

Thank you for your inquiries; if you have any further questions, please feel free to contact me at dgambelin@recology.com or 1-650-242-6383.

We look forward to continued discussions.

Sincerely,

Donald Gambelin
Senior Director of Business Development
Recology Inc.

Attachment 3

STAFF REPORT

Meeting Date:	December 2, 2014
To:	Honorable Mayor & City Council
From:	Trish Rhay, Assistant Director of Public Works Services – Utilities Michelle Tse, Senior Management Analyst
Subject:	Assignment of the City's Solid Waste Franchise Agreement
Attachments:	1. Crown Disposal Letter 2. Crown Disposal Agreement

INTRODUCTION

Since 2004, Crown Disposal has a franchise agreement with the City to provide exclusive commercial solid waste disposal and residential solid waste processing services. The City recently received notice from Crown Disposal that the company is currently being acquired by solid waste company Recology. Crown Disposal has expressed interest in assigning the agreement for solid waste services to Recology.

DISCUSSION

Crown Disposal was originally awarded the exclusive service agreement through a competitive Request for Proposal ("RFP") process in 2004; the resulting eight year contract was set to expire in 2012. In 2010, the Agreement was re-negotiated and extended until March 31, 2018. The Agreement provides the City with two options to extend it on a month-to-month basis for up to 24-months each at the City's sole discretion. Therefore, the City may extend the Agreement for up to four additional years to March 31, 2022.

The City's agreement with Crown Disposal also includes provisions regarding assignment of the contract. For example, the proposed assignee, amongst other requirements, must provide the City with audited financial statements and record of solid waste management experience. Crown Disposal has expressed interest in executing the assignment to Recology. Representatives from Recology have expressed earnest interest to transition into the assignment by January 2015.

This item was discussed with the Public Works Liaison Committee ("Liaison Committee"), Councilmembers Brien and Mirisch, during the November 25, 2014 meeting. Options, both long term and short term, were discussed and included the following: possible assignment of the contract, seek another vendor to provide interim emergency solid waste services, or go through the RFP process to select a long-term service provider. The Liaison Committee expressed that it would be most prudent to re-evaluate the existing terms and negotiate interim terms and conditions with Recology

during the transition. Concurrently, the City should work on a longer term solution to meet solid waste service needs.

Staff is recommending that the City Council establish an ad hoc committee to work with staff to negotiate interim terms and conditions with Recology. HF&H Consultants has worked with the City in the past to provide advice on solid waste matters and will continue to assist in this upcoming negotiating process. Areas of negotiation include discussions regarding contract term length, solidifying contract provisions to protect ratepayers and enhance service performance, as well as financial incentives.

FISCAL IMPACT

There is minimal fiscal impact for negotiating contract terms with Recology.

RECOMMENDATION

Staff is recommending the City Council establish an ad hoc committee and approval to begin discussions with Recology, who is in the process of acquiring the City's solid waste franchisee Crown Disposal Company, and has requested the assignment of the franchise agreement as part of the acquisition process.

George Chavez
Approved By

Attachment 1

Crown Disposal Co. Inc.
FAMILY OF COMPANIES

9189 DE GARMO AVENUE • Mailing Address: P.O. BOX 1081 • SUN VALLEY, CALIFORNIA 91352
(818) 767-0675 • (323) 875-0587 • FAX# (818) 768-3930

November 21, 2014

Via Hand Delivery
City Manager
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210-3713

Director of Public Works and Transportation
Department of Public Works and Transportation
345 Foothill Road
Beverly Hills, CA 90210

City Attorney
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210-3713

Re: Request for Consent to Assignment of Franchise Agreement between City of Beverly Hills and Crown Disposal Company, Inc. for Commercial Solid Waste Collection Services and Residential Solid Waste Processing, Agreement No. 537-10 (the "***Agreement***")

Dear Sir/Madam,

We wish to inform you that Crown Disposal Company, Inc. ("***Crown***") has entered into an agreement dated as of October 22, 2014, to sell all or substantially all of its assets to Recology Los Angeles or an affiliate thereof ("***Recology***"), who will continue Crown's operations (the "***Transaction***").

The purpose of this letter is to request that the City of Beverly Hills provide its consent for Crown to assign the Agreement to Recology. Upon the assignment of the Agreement, Recology will be subject to the applicable terms and conditions of the Agreement and will continue to perform the obligations thereunder. This request is made pursuant to the Agreement, and the fees that must be paid in connection with a request for assignment are enclosed herewith. The materials requested will be provided by Recology under separate cover.

At your earliest convenience, please countersign this letter agreement to indicate your consent of the assignment of the Agreement and send a copy of the signed document to Lisa Whiting at Lewitt Hackman Shapiro Marshall & Harlan, via e-mail at lwhiting@lewitthackman.com or via mail at 16633 Ventura Boulevard, Eleventh Floor, Encino, CA 91436, Attn: Lisa Whiting. Your consent will become effective as of the closing of the Transaction and will have no effect unless the closing of the Transaction occurs. We expect the Transaction to close in January 2015. Time is of the essence in obtaining a response to this request, accordingly, please do not hesitate to contact me at (818) 767-0675 regarding this matter.

We appreciate your prompt consideration of this request.

Best Regards,

John Richardson
Senior Vice President

cc: Donald Gambelin, Recology

ACKNOWLEDGED AND AGREED:

CITY OF BEVERLY HILLS

BY:_____
NAME:_____
TITLE:_____

Attachment 2

AGREEMENT NO.
537-10

FRANCHISE AGREEMENT BETWEEN CITY OF BEVERLY HILLS AND CROWN DISPOSAL CO., INC. FOR COMMERCIAL SOLID WASTE COLLECTION SERVICES AND RESIDENTIAL SOLID WASTE PROCESSING

* * *

FRANCHISE
AGREEMENT
BETWEEN
CITY OF BEVERLY HILLS
AND
CROWN DISPOSAL CO., INC.
FOR
COMMERCIAL SOLID WASTE COLLECTION SERVICES
AND RESIDENTIAL SOLID WASTE PROCESSING

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FRANCHISE AGREEMENT

This Franchise Agreement ("Agreement"), effective on Dec. 21, 2010, is entered into by the City of Beverly Hills, a municipal corporation, organized and existing under the laws of the State of California, ("City") and Crown Disposal Co., Inc. ("Company").

RECITALS:

A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("the Act", California Public Resources Code Section 40000 et seq.) has determined that it is in the public interest to authorize and require local agencies to make adequate provision for solid waste handling within their jurisdictions to meet the goals and objectives of the Act.

B. In accordance with the Act, City is required to implement its Source Reduction and Recycling Element (SRRE) in order to divert a minimum of 50 percent of its solid waste from landfill disposal.

C. In accordance with California Public Resources Code Section 40059(a)(2), City has determined that the public health, safety, and welfare require that an exclusive franchise be awarded to a qualified company for the collection, transportation, recycling, processing, and disposal of solid waste, and for other related services to meet the goals and objectives of the Act.

D. The current solid waste franchise agreement for commercial solid waste collection services will expire on March 31, 2012.

E. In accordance with Article 4.5 of the Beverly Hills Municipal Code, and Sections 49300 and 49500-49523 of the Public Resources Code, City is authorized to enter into exclusive franchise agreements for commercial solid waste collection services.

F. Under this Agreement, City desires to authorize Company to provide exclusive commercial solid waste collection services within the City and to furnish all personnel, equipment and supplies necessary to collect, pick up, remove and dispose of commercial solid waste and recyclable materials, as defined herein, generated or accumulated by commercial, institutional, or industrial users or customers within the City.

G. City and Company are aware of the laws governing the safe collection, transport, recycling, and disposal of solid waste, including the Act, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The parties acknowledge that, by entering into this Agreement, City does not thereby become an "arranger" or a "generator," as those terms are used in CERCLA, and that Company, not City, is "arranging for" the collection, transport for disposal, and recycling of municipal solid waste from commercial accounts in the City.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1

DEFINITIONS

Whenever any term used in this Agreement has been defined by the provisions of Section 6-1.450 of Article 4.5 of Chapter 1, Title 6 of the Beverly Hills Municipal 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 will apply unless the term is otherwise defined in this Agreement, in which case this Agreement will control. The following capitalized words and terms have the following meanings:

1.1 Act

"Act" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Sections 40000 et seq.), as it may be amended from time to time.

1.2 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships, and sole proprietorships) that are directly or indirectly related to Company by virtue of direct or indirect ownership interests or common management. An Affiliate includes a business in which Company owns a direct or indirect ownership interest, a business that has a direct or indirect ownership interest in Company, and a business that is also owned, controlled or managed by any business or individual that has a direct or indirect ownership interest in Company. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, in effect on the date of this Agreement, will apply; provided, however, that (a) "ten percent (10%)" will be substituted for "fifty percent (50%)" in Section 318(a)(2)(C), and in Section 318(a)(3)(C); and (b) Section 318(a)(5)(C) will be disregarded. For purposes of determining constructive or indirect ownership under Section 318(a), an ownership interest of less than ten percent (10%) will be disregarded, and percentage interests will be determined on the basis of the percentage of voting interest or value that the ownership interest represents, whichever is greater.

1.3 Agreement

"Agreement" means this Franchise Agreement between City and Company for the Collection, transportation, Recycling, processing and Disposal of Solid Waste, and for all

other services related to meeting the goals and objectives of the Act, including all exhibits and attachments, and any amendments.

1.4 Billings

"Billings" means statements of charges for services provided to accounts serviced under this Agreement, which statements are rendered by City or Company, or by others on behalf of City or Company, to Persons responsible for arranging for Solid Waste removal.

1.5 Bin

"Bin" means a metal container, including Containers with compactors attached, with a capacity of one-and-one-half to six cubic yards and having a hinged lid and wheels, that is serviced by a front-end loading truck.

1.6 Bulky Item

"Bulky Items" means large discarded items including, but are not limited to: discarded furniture (including chairs, sofas, mattresses, and rugs, but not carpeting); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and similar items, commonly known as "white goods"); electronic equipment (including stereos, televisions, computers, VCRs, and similar items commonly known as "brown goods"); wood waste, tree trunks, and large branches (if no longer than two feet in diameter, four feet in length, and 50 pounds in weight per bundle), scrap wood, rocks, sod and earth, in the aggregate not exceeding one cubic yard per Collection; clothing; and tires. Bulky 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.

1.7 Business Day

"Business Day" means each calendar day, excluding Saturdays, Sundays and holidays included in Section 3.7.1.

1.8 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.

1.9 Cart

"Cart" means a plastic container with a capacity of no less than 30 and no greater than 300-gallons, having a hinged lid and wheels, that is serviced by an automated or semi-automated truck.

1.10 City

"City" means the City of Beverly Hills, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as these boundaries may be modified during the term of this Agreement.

1.11 Collect/Collection

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

1.12 Commercial and Industrial Premises

"Commercial and Industrial Premises" means 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 that are permitted under applicable zoning regulations and that do not constitute the primary use of the property.

1.13 Company

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

1.14 Section Deleted

1.15 Company Compensation

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

1.16 Construction and Demolition Waste

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

1.17 Containers

"Containers" means all types of Solid Waste receptacles, including Carts, compactors, Bins, Rolloff Boxes, and Customer-provided receptacles.

1.18 Customer

"Customer" means the Person having ownership or control of any Premises in the City for which an account for Solid Waste Collection service has been established by Company under the scope of this Agreement, as further defined in Section 2.1.

1.19 CPI

"CPI" means the Consumer Price Index for All Urban Consumers, all items index – U.S. city average.

1.20 Disposal

"Disposal" means the final disposition of Solid Waste Collected by Company at a landfill in full compliance with all applicable laws and regulations.

1.21 Disposal Site

"Disposal Site" means the Solid Waste handling Facility or Facilities used for the final Disposal of Solid Waste Collected by Company. The Chiquita Canyon Landfill, Sunshine Canyon Landfill, and Puente Hills Landfill shall be the designated Disposal Site(s) under this Agreement unless and until another site is approved by City.

1.22 Effective Date

Effective Date" shall have the meaning ascribed in Section 12.14.B.

1.23 Environmental Laws

"Environmental Laws" means all federal and state statutes and county and City ordinances concerning public health, safety and the environment including, without

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 later amended, and all rules and regulations promulgated thereunder.

1.24 Facility

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

1.24A Food Waste

"Food Waste" means:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including waxed cardboard, napkins, paper towels, paper plates, paper milk cartons);
- Tea bags;
- Coffee grounds and filters
- Wooden crates;
- Sawdust;
- Plants (including floral trimmings, tree trimmings, leaves, grass, brush, weeds and all items accepted in the Green Waste Cart per Sections 1.48 and 5.6.1); and,
- Other compostable materials.

1.25 Franchise

"Franchise" means the exclusive right granted to Company by City, per Section 2.1, to provide Solid Waste services within the City in accordance with this Agreement.

1.26 Green Waste

"Green Waste" means leaves, grass, weeds, wood materials from trees and shrubs, palm fronds, yucca, large tree stumps, and holiday trees that are not more than four inches in diameter or four feet in length, and similar materials generated at any Premises.

1.27 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," "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 under those statutes that currently exist or may later be enacted; and (c) any other 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 later enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas, synthetic fuel products, and by-products.

1.28 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 any future amendments to or recodifications of these 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.

1.28A Inerts

"Inerts" means that subset of Solid Waste that does not contain Hazardous Waste or soluble pollutants at concentrations in excess of applicable water quality objectives, and

does not contain significant quantities of decomposable waste. Inerts include debris such as concrete and other materials generally accepted at Inert landfills.

1.29 Materials Recovery Facility or MRF

"Materials Recovery Facility" or "MRF" means a Facility licensed or permitted in accordance with the Act that separates secondary materials, such as paper and other fibers, plastic, mixed glass, and metal containers, and processes them for sale to end users.

1.30 Mixed Waste Processing

"Mixed Waste Processing" means the separation and sorting of Recyclables and other recoverable materials from Refuse at a Materials Recovery Facility where commingled loads of Solid Waste are processed.

1.31 Multi-Family

"Multi-Family" means a residential property with two or more dwelling units, regardless of whether the occupancy of those dwelling units is temporary or permanent.

1.32 Owner

"Owner" means the Person holding legal title to 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.

1.33 Person

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

1.34 Premises

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

1.35 Putrescible Waste, Putrescible

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

1.36 Rate Year

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

1.37 Recycling

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

1.38 Recyclable Materials, Recyclables

"Recyclable Materials" and/or "Recyclables" means source-separated by-products and commingled Solid Waste and Recyclable Materials of some potential economic value that are set aside, handled, packaged, or offered for Collection in a manner different from Refuse under this Agreement.

1.39 Refuse

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

1.40 Rolloff Box

"Rolloff Box" means an open-top metal container or closed compactor box with a capacity of 10 to 40 cubic yards that is serviced by a rolloff truck.

1.41 Solid Waste

"Solid Waste" means all discarded Putrescible and non-Putrescible solid, semisolid, and liquid wastes Disposed with other Solid Waste, including Refuse, Construction and Demolition Wastes, Bulky Items, Recyclable Materials, Food Waste and Green Waste, or

any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of "non-hazardous solid waste" set forth in the California Code of Regulations.

1.42 State

"State" means the State of California.

1.43 Temporary Service

"Temporary Service" means Solid Waste Collection services that are 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 the ongoing operations of a business is not included.

1.44 Transformation

"Transformation" has the meaning ascribed in Public Resources Code Section 40201.

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise

Subject to the terms and conditions of this Agreement, City grants to Company, and Company accepts from City, the exclusive Franchise, right and privilege to provide Solid Waste Collection, transfer, transport, Recycling, processing, and Disposal services at all Commercial and Industrial Premises, and Multi-Family Customers receiving Refuse Bin service but not Refuse Cart service, within the City.

2.2 Administrative Fee

Company will pay to City an administrative fee in a one-time lump sum payment of One Hundred Fifty Thousand dollars ($150,000) within seven days after the execution of this Agreement to reimburse City for its staff time and out-of-pocket costs incurred in awarding this Franchise.

2.3 Exclusive Nature of Franchise

Company is responsible for enforcing the exclusivity of this Agreement. City has the right to enforce the exclusivity provisions if, in its sole discretion, it chooses to do so. If City is required to take administrative, law enforcement, or other legal action to protect Company's exclusive rights (including the adoption of any resolution or ordinance intended to facilitate the enforcement of those exclusive rights) Company must reimburse City for its reasonable administrative, law enforcement, or legal costs related to any such action.

2.4 Operative Date

The operative date of this Agreement is April 1, 2012 ("Operative Date"). The Operative Date is the date upon which Company will commence providing to Commercial and Industrial Customers the Solid Waste management services that are authorized by this Agreement.

2.5 Term of Agreement

The term ("Term") of this Agreement is six years, commencing on April 1, 2012, and expiring on March 31, 2018 (the "Initial Term"), unless earlier terminated pursuant to this Agreement. City, in its sole discretion, may authorize up to two extensions (each, an "Extension Period") of up to 24-months each. Each such Extension Period shall be on a month-to-month basis. During each Extension Period, and in addition to rights of termination set forth elsewhere in this Agreement, this Agreement may be terminated by City at any time, without cause, if City gives Company a 30-day written notice of termination. City may, upon 90-days' advance written notice to Company prior to expiration of the Initial Term, exercise the first 24-month extension option. If City provides this extension notice, then the Agreement Term will automatically renew on a month-to-month basis, up to a total of 24 months, unless earlier terminated pursuant to this Agreement. City may, upon 90-days' advance written notice to Company prior to expiration of the first Extension Period, exercise the second 24-month extension option. If City provides this extension notice, then the Agreement Term will automatically renew on a month-to-month basis, up to a total of 24 months, unless earlier terminated pursuant to this Agreement. If both 24-month extensions are exercised in full by City, the total Term of the Agreement will be 10 years, unless earlier terminated pursuant to this Agreement.

2.6 Conditions to Effectiveness of Agreement

The effectiveness of this Agreement, and the performance of City's obligations, are subject to the satisfaction of all conditions set out below, any of which may be waived by City in whole or in part.

a) Accuracy of Representations. Representations and warranties made by Company in this Agreement are true and correct as of the Effective Date, as defined in Section 12.14(B).

b) Absence of Litigation. There is no litigation pending that challenges the award of this Franchise to Company, or the execution of this Agreement, or that seeks to restrain or enjoin its performance.

c) Furnishing of Insurance and Bonds. Company has furnished evidence of the insurance and bonds required by Article 8.

d) Effectiveness of City Council Action. City's action approving this Agreement has become effective under California law prior to the Effective Date of this Agreement.

2.7 Limitations on Scope of Franchise

A. The Franchise granted to Company is exclusive except for the categories of Solid Waste listed in this section. The granting of this Franchise does not preclude the categories of Solid Waste listed below from being delivered to, Collected, and transported by others, provided that no Person is excused from obtaining from City any authorization that is required by law:

1. Single-Family Solid Waste Collection services and Multi-Family Solid Waste Collection services to Customers using Carts.

2. Recyclable Materials that are source-separated from Solid Waste by the Customer and which Customer sells or is otherwise compensated for by other Persons in a manner resulting in a net payment to the Customer.

3. 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 such licensed company or by City, and where the licensed company uses its own equipment and employees, provided company uses its vehicles and not separate Containers such as drop boxes to Collect the material, and that the company provides proof of delivery of each load to a Recycling/processing Facility to City. Company will encourage the processing of demolition and construction debris originating in the City at Company's facility by offering a discounted rate.

4. 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 (or by the Customer's full-time employees) to a processing or Disposal Facility.

5. Recyclable Materials and Green Waste that are source-separated at any Premises by the Customer and donated to youth, civic, or charitable organizations.

6. Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, Sections 14500, et seq., California Public Resources Code.

7. Green Waste removed from Premises by a gardening, landscaping, or tree trimming company using its own equipment and employees as an incidental part of a total service offered by the company.

8. Animal waste and remains from any slaughterhouse or butcher shops for use as tallow.

9. By-products of sewage treatment, including sludge, sludge ash, grit and screenings.

10. Hazardous Waste, medical waste, and radioactive waste, regardless of its source.

11. The casual or emergency Collection, removal, Disposal or diversion of Solid Waste by City through City officers or employees in the normal course of their employment.

B. Company acknowledges that City may permit other Persons besides Company to Collect the types of Solid Waste listed in this section, without obtaining approval of Company. 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 household Hazardous Waste pickups.

C. The grant to Company of this exclusive Franchise will be interpreted in a manner consistent with state and federal laws. The scope of this exclusive Franchise will be limited by current and future state and federal laws regulating Solid Waste handling, control of Recyclable Materials, Solid Waste flow control, and related matters. If future interpretations of current law, or the enactment of new laws or local ordinances, limit the ability of City to lawfully provide for the scope of Franchise services specifically set forth, Company agrees that the scope of the Franchise will be limited to those services that may be lawfully provided, and City will not be responsible for any lost profits that

may be claimed by Company. In that event, it is the responsibility of Company to minimize the financial impact to whatever extent is reasonably feasible.

2.8 City's Right to Direct Changes

2.8.1 General

City may direct Company to perform additional services (including new diversion programs) or to 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 or new requirements for Customers, and alternative rate structures are included among the kinds of changes that City may direct. Company acknowledges that State or City law may increase the diversion requirement during the term of this Agreement and Company agrees to propose services to meet such diversion requirements. Company shall be entitled to an adjustment in its Company Compensation for providing such additional or modified services to the extent that such services are not used to meet existing Agreement requirements such as Section 3.6, including a profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. If the City and Company cannot agree on compensation for new or additional services, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.1.

2.8.2 New Diversion Programs

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

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be used (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees by classification).
- Type of Containers to be used.
- Program publicity, education and marketing.

- Projection of the annual 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.

2.9 Ownership of Solid Waste

When Solid Waste is placed in Containers and properly placed at the designated Collection location, ownership and the right to possession will transfer directly from the Customer to Company by operation of this Agreement. Subject to Company's objective to meet the source reduction and Recycling goals that apply to City, and City's right to direct Company to process and dispose of Solid Waste at a specified Solid Waste Facility or at a specific Disposal Site, if City exercises that right by providing specific written direction to Company, then Company has the right to retain, recycle, process, dispose of, and otherwise use that Solid Waste, or any part thereof, in any lawful manner or for any lawful purpose. Subject to the provisions of this Agreement, Company has 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 that it Collects. Solid Waste, Green Waste, and Recyclable Materials, or any part thereof, that is Disposed of at a Disposal Site or Sites (whether landfill, Transformation Facility, transfer station, processing Facility, or Material Recovery Facility) will become the property of the owner or operator of the Disposal Site once deposited there by Company. City may obtain ownership or possession of Solid Waste placed for Collection upon written notice of its intent to do so; however, nothing in this Agreement may be construed as giving rise to any inference that City has such ownership or possession unless such written notice has been given to Company. Nothing in this section is intended to affect Company's right to retain Recyclables revenue as otherwise permitted under this Agreement.

2.10 Company Status

Company represents and warrants to City the following:

1. Company is duly organized, validly existing, and in good standing under all applicable laws;

2. Company is duly qualified to transact business in the State of California;

3. Company has all necessary licenses, permits, and certifications to provide the services required by this Agreement.

4. Company is authorized to enter into and perform its obligations under this Agreement;

5. Company's Board of Directors or partners of Company (or the shareholders, if necessary) have taken all actions required by law, the articles of incorporation, the bylaws or otherwise, to authorize the execution of this Agreement; and,

6. The persons signing this Agreement on behalf of Company have authority to do so.

2.11 Business License

As a condition of this Agreement, Company must obtain and maintain a business license to operate in the City of Beverly Hills, and any other licenses or permits that may be required by federal, state, county or city law, ordinance or regulation. No services may be provided under this Agreement until such business license has been obtained, and all fees paid therefore, by Company.

2.12 Annexations

This Agreement will extend to any territory annexed to City during its term, except to the extent that Collection by Company within that annexed territory would violate the provisions of Public Resources Code Section 49520. In that event, this Agreement will become effective in that area at the earliest possible date authorized by law, and City will cooperate with Company to fulfill any requirement necessary for Company to serve the annexed area consistent with this section.

2.13 Governing Requirements

Company must comply with all provisions of this Agreement, City's Municipal Code, and all other applicable laws, rules and regulations that pertain to the Collection, storage, transport and Disposal of Solid Waste and the Collection and marketing of Recyclable Materials. Company is responsible for obtaining and maintaining all permits and licenses required by regulatory authorities for the Commercial Solid Waste Collection and Disposal services authorized by this Agreement.

ARTICLE 3

DIRECT SERVICES

3.1 Refuse Collection Services

A. The work to be performed by Company includes, but is not limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and other items necessary to perform the services required. The designation of, and specification of requirements for, particular items of labor or equipment does not relieve Company of the duty to furnish all others, as may be required, whether or not identified elsewhere in this Agreement.

B. The work to be performed by Company will be performed in a thorough and professional manner so that Customers within the City are provided with reliable, courteous and high-quality Solid Waste Collection services at all times.

C. Company is responsible for the proper placement of Solid Waste Containers, and must return all Bins to their respective Collection areas with lids in a closed, secured, or locked position, as may be applicable.

3.1.1 Permanent Bin Services

A. Company will provide Bins and Bin Collection service to Commercial and Industrial Customers and to Multi-Family Customers that use Bins. Company will Collect and remove all Refuse that is placed in Bins from Multi-Family properties and Commercial and Industrial Premises receiving Bin service, at least once every calendar week or more frequently if necessary to handle the waste stream from the Premises where the Bins are located. Where feasible, and when authorized in advance by City, Solid Waste Bins may be shared by Customers.

B. Company must supply all necessary equipment to provide Solid Waste Collection Bin services to Commercial and Industrial Customers occupying buildings with covered parking areas having entrances with a minimum height of 7'6".

C. Special consideration will be given when determining the pickup area to ensure that the flow of traffic is not impeded.

D. Existing Customers shall continue to be charged either Bin rates or restaurant Bin rates, as such rates are included in Exhibit 1 and as maybe subsequently adjusted, based upon which of the two rate schedules (Bin or restaurant Bin) the Customer was being Billed under immediately prior to the start of service under this Agreement. Company may not charge restaurant Bin rates to new Customers or to Customers previously charged standard Bin rates without prior written City approval.

E. Company may not transfer Bin Customers to or from Refuse Cart Collection without prior written City approval.

F. All Refuse Collected shall be sent to a Materials Recovery Facility for processing to recover Recyclables prior to landfilling residual waste.

3.1.2 Rolloff Box Refuse Service

Company must provide Rolloff Box service to all Customers requesting service at a rate not to exceed the approved maximum rate contained in Exhibit 1. Maximum rate is approved pull rate, plus Disposal cost, or processing cost minus revenue received for Recyclables. The Disposal or processing cost per ton may not exceed the actual rate charged to Company or the Disposal rate as adjusted in accordance with Article 5, whichever is lower. Company must divert 70% of total Rolloff Box tonnage Collected, as measured for the period of April 1, 2012 to December 31, 2012, and subsequently on a calendar year basis.

If Company arrives to pull a Rolloff Box at a scheduled time agreed upon with the Customer and Company must wait more than 30 minutes after notifying City of blockage to access the Rolloff Box through no fault of Company, a dry run fee shall be permitted per the approved rate schedule.

3.1.3 Temporary Bin Service

Company must provide Temporary Bin Service to all Customers requesting that service. However, if Company does not provide the requested container within two Business Days of request, Customer can call and receive Temporary Bin Service from another company. If Company arrives to service the Bin at a scheduled time agreed upon with the Customer and Company must wait more than 30 minutes after notifying City of blockage to access the Bin through no fault of Company, a dry run fee shall be permitted per the approved rate schedule.

3.1.4 On-Call Bulky Item Pickup

A. Company will provide Bulky Item pickup service to all Customers. Customers will be instructed in educational materials to provide Company within one Business Day's notice for pickup service. Company may charge Commercial and Industrial Customers for pickups in accordance with the rate schedule contained in Exhibit 1, based on the number and type of items. Multi-Family Customers, including group homes, shall receive this service at no additional charge. Timing and place of pickup must be arranged so traffic and sidewalks are not obstructed prior to or during pickup.

B. Bulky Item Collected by Company may not be landfilled or Disposed of until the following hierarchy has been followed by Company:

1. Reuse as is.
2. Disassemble for reuse or Recycling.
3. Recycle (through participation of charitable organizations).
4. Disposal.

3.1.5 Scout Service

A monthly scout fee may, at Company's request, be authorized by City. City staff must first verify that the location of a Solid Waste Bin requires the Company's personnel to manually move that Bin 50 feet or more, as measured from the Container's enclosure to the normal point of Collection, or that a scout vehicle is operationally required, such as to move the Bin to the Collection point because physical conditions of the Customer's property (e.g., steep inclines), or access to the container by the Collection truck, reasonably prevent the crew from manually positioning the container. Company may request written advance City approval to charge a scout service fee for a Bin that has a compaction device attached and must be manually moved to the point of Collection a distance less than fifty (50) feet; City may approve the application of such a fee in its sole discretion on a case by case basis. When so authorized, the scout fee will be added to Company's monthly invoice to City for Solid Waste Bin Collection services, and will be in the amount set forth in Exhibit 1. Company will obtain advance approval from City for each Customer location where Company proposes to assess a scout fee.

3.1.6 Lids, Casters, Hasps and Locks

When justified for efficient Bin Collection service or where necessary to deter scavenging and the unauthorized removal of materials from Bins placed in unsecured locations, City may require the use of Bins having lids, as well as casters, hasps or locks. Upon request from City, Company must provide Containers with casters, hasps or locks. Every lock for such Bins must be "keyed-alike" throughout City. Two keys will be furnished to the Customer. The amount of the caster, hasp or lock service fee will, at the request of Company, be authorized by City in addition to the maximum monthly rates, fees, and charges authorized in this Agreement for monthly Solid Waste Bin Collection services.

3.1.7 Overflowing Bins

Overflowing Bins must be Collected within 24 hours of notification at no additional charge. Company may request City approval to increase a Customer's capacity or service frequency if Company documents three instances of an overflowing Bin requiring cleanup in one month, documents these instances with photographs, places a warning on the container and provides a copy of the warning and photograph to the Customer. Warning notice shall include the possibility of a service increase if the problem is not rectified. The warning notice shall be approved in form by City.

3.2 Recycling Services

3.2.1 Recycling

Company agrees to provide, at no additional charge (including no fee for scout service), Recycling Collection service to all Customers requesting it, including the Beverly Hills School District and its campuses. Source separated Recyclables Collected under this section may be Collected on a separate route from Refuse, or on a route commingled with Refuse that is to be processed to recover Recyclables; this service shall remain free of charge under either option. Company may purchase Recyclable Materials from its Customers as well. Company will provide Recycling Containers in sufficient quantities to meet the Recycling needs of each Customer. Recycling Collection programs will 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; 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; telephone books; and florescent tubes. Company will also make programs available for all other Recyclable Materials for which it has established markets.

3.2.2 Rolloff Box Recycling

Company must provide Rolloff Box service for Recyclables. Company may bill City for pull, plus processing costs, minus revenue from Recyclables. Since City is performing Customer Billing, any Recyclable Material revenues that are not used to offset processing costs are to be remitted to City and not to the Customer.

3.2.3 Construction and Demolition Waste Recycling

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

- Transporting all Construction and Demolition Waste loads to an alternate Facility where they will be processed for reuse.
- Inquiring of all Rolloff Box Customers about the type of Solid Waste to be generated, instructing all potential Construction and Demolition Waste generators on how to divert such materials, and providing a "how-to" brochure with alternative processing Facility contact information.
- Contacting contractors on a list provided by City on a regular basis to educate them on Construction and Demolition Waste diversion.

Company shall divert a minimum of 80% from construction and demolition projects for buildings pursuing green building compliance in accordance with City of Beverly Hills Municipal Code, and provide certification of the actual diversion rate for material Collected from the project. Company may Bill Customers requesting 95% diversion for "extraordinary performance" under LEED an additional fee in accordance with the approved rate schedule.

3.2.4 Restaurant Food Waste Diversion

Company shall Collect Solid Waste from restaurants and hotels identified by City on a separate route, reverse-sort this Solid Waste to remove non-compostables, and send all remaining Solid Waste for composting. This program shall be offered to Customers that generate predominately compostable Solid Waste. Such Customers shall not be required to source separate Food Waste from other material and may have all Refuse disposed in, and Collected from, one Container. This service shall be provided at the approved restaurant bin rates included in Exhibit 1 and as subsequently amended. Company shall receive City approval before adding or deleting Customers from this program.

If participants discontinue participation, Company shall enroll new participants with comparable Food Waste tonnage generation.

3.2.5 Marketing and Sale of Recyclable Materials

Company is responsible for the marketing and sale of all Recyclable materials Collected under this Agreement. Company will retain all proceeds from sales of Recyclable Materials, except for Recyclable Materials revenue received for Rolloff Box loads that shall be remitted to City.

3.2.6 Large Venue Event Assistance

Company will assist planners of large venue events with reporting and planning needs as may be useful in meeting the requirements of Public Resource Code Sections 42648-42648.7 at no additional charge. Company shall provide Recycling services upon request to special event planners at no additional charge. Refuse Collection and Disposal service shall be provided in accordance with the approved rate schedule and as otherwise described in this Agreement.

3.3 Green Waste Program

3.3.1 Rolloff Box Green Waste Service

Company must make Rolloff Box Green Waste Collection available to all Customers at a rate of pull, plus actual dump fee, not to exceed the Rolloff Box Refuse rate for Collection and Disposal.

3.3.2 Holiday Tree Collection Program

Company must Collect holiday trees placed for Collection from all Customers (including both Multi-Family and Commercial and Industrial) serviced under this Agreement at no additional charge for the period from December 26 until January 31. Trees must be cut into lengths no longer than six feet, be free of ornaments, garlands, and tinsel, and stands must be removed. Trees must be diverted from Disposal.

3.3.3 End Uses for Green Waste

Company must divert Green Waste materials, including holiday trees Collected under Section 3.3.2, from Disposal. Company must provide end uses for Green Waste that maximize diversion credits for City in accordance with regulations established by CalRecycle.

3.4 Warning Notice

Company must warn Customers who have non-Recyclable Materials in their Recycling Containers. With City approval, Company may remove Recycling Containers from Customers who repeatedly fail to sort properly and to segregate recyclable materials, resulting in a minimum of 20% contamination. Company must report monthly to City any warning notices issued, and Company will provide Customer with a minimum of two warnings prior to requesting removal of Container.

3.5 City Services

3.5.1 City Facilities Collection

Company must Collect and Dispose of all Solid Waste generated and Recyclable Materials accumulated at Premises owned or operated by City in accordance with the approved rate schedule. These Premises include, but are not limited to, offices, parks, and street maintenance operations. Collections will be scheduled at a time mutually agreed upon by Company and City. Company will provide and service Recycling Containers where feasible at City facilities at no additional cost.

3.5.2 Special Events Collection

Company will provide Refuse and Recycling Bin and Rolloff Box Collection service at City-designated events and may charge for this service in accordance with the approved

rate schedule. Company shall provide cardboard litter boxes and liners for the Collection of Refuse as needed at all events at Company's actual cost and Recyclables cardboard boxes and liners at no additional cost. City crews will Collect Refuse and Recyclable Materials from smaller Containers placed throughout the event and deposit the material in Company-provided Bins and Rolloff Boxes.

3.5.3 Emergency Collection and Disposal Service

At City's request, Company will assist with emergency Collection and Disposal service resulting from a major disaster, such as an earthquake, storm, riot or civil disturbance, or as otherwise determined necessary by City, by providing Collection vehicles and drivers normally assigned to City. Company will be paid in accordance with the approved rate schedule.

3.5.4 Abandoned Item Collection

Company will Collect abandoned items within one Business Day of observation by Company or of notification from City to do so. These services, including Disposal costs, will be provided at no additional charge.

3.5.5 Sidewalk Receptacle Collection

Upon thirty (30) days written notice from City, any time after execution of this Agreement, Company shall Collect Solid Waste from all public litter Containers, or "sidewalk receptacles," in the City on at least a daily basis. (This service is anticipated to begin prior to April 1, 2012.) Company shall process all Solid Waste Collected to recover Recyclables. Collection may be required more frequently during and following City special events. City shall provide sidewalk receptacles. Company shall provide replacement liners for receptacles in the Business Triangle and at other locations designated by City that use liners. City will be responsible for cleaning and maintaining Containers for as long as City has a designated site for a clarifier at the City's Public Works yard. If City no longer has this designated space at the City's Public Works yard, Company shall be responsible for cleaning Containers and shall not receive additional compensation for providing these services. These services shall be provided at no additional charge.

3.5.6 Containers

Company will provide Customers with Bins, Rolloff Boxes or compactors, upon request, for Collection of Solid Waste.

A. Maintenance. Company must maintain its Containers in a clean condition, free from Putrescible residue. Containers will be constructed of heavy metal, or other suitable, durable material, and will be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the container, must be maintained in good repair. Company shall repair or replace a damaged or missing container by the next Businesses Day after observation by Company or notification by City or Customer.

B. Cleaning. Company will inspect, and if necessary or requested by the Customer, clean or replace all Containers (Bins with and without compactor attachments and Rolloff Boxes) once each year at no charge. Company will perform cleaning or replacement of Containers more frequently if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customers may request additional Bin and Rolloff Box cleanings in accordance with the approved rate schedule. Compactor Rolloff Box cleanings are outside the scope of this Agreement. Company must remove graffiti from any container within three days of request by City or Customers. Unsanitary Containers must be replaced within one day after a request by City or Customers.

C. Identification. Each container placed in City by Company must have the name and phone number of Company in letters not less than three inches high on the exterior of the container so as to be visible when the container is placed for use. Company must identify the Containers that are assigned to each Commercial and Industrial Customer, and each Multi-Family Customer with Bin service, and identify the current service level for Bin Customers, by means mutually agreeable between City and Company. Information on labels must be updated immediately to reflect changes. Company must repaint Bins upon City's request.

D. Bin Color. Refuse, including mixed waste, Bins shall all be painted a consistent color. Source separated Recycling Bins shall be all painted a consistent color, different than the Refuse/mixed waste Bin color.

E. Rolloff Box Coverage Requirement. Company must properly cover all open Rolloff Boxes during transport as required by the State Vehicle Code.

3.6 Diversion Requirements

The minimum amount that must be diverted through Recycling, Green Waste and Food Waste Collection, Mixed Waste Processing, and Transformation is 60% of the Solid Waste Collected by Company during each year of this Agreement. Diversion achieved by Transformation will be credited toward this 60% requirement only to the extent that the State provides City with diversion credit for this tonnage.

The City-wide diversion rate as reported to CalRecycle exceeds 50%. Should, in any year under this Agreement, City not reach the Act's 50% diversion goal for its entire waste stream, and if City determines that Company has not maximized diversion from the services and programs contemplated under this Agreement, Company will undertake reasonable efforts to implement programs and to provide equipment necessary in order for City to meet the 50% diversion goal.

3.7 Operations

3.7.1 Schedules

A. To preserve peace and quiet, no Solid Waste may be Collected from Bins at, or within 500 feet of, occupied residential premises, senior citizen housing facilities, motels, or hotels between the hours of 9:00 p.m. and 7:00 a.m. Company's Collection vehicles must not be operated in any residential area of City between the hours of 9:00 p.m. and 7:00 a.m. Site and route-specific exemptions may be made to this limitation by written notice provided by City's Director of Public Works and Transportation. Company will 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, Thanksgiving Day or Christmas Day, alternate Collection must be performed on the following day, unless the holiday falls on a Saturday, in which case Collection must be made up on the following Monday. All other Collection days falling on a legal holiday will remain as scheduled. Company may be requested by City or Customer, and is permitted, to perform limited Collections on holidays in areas where business traffic continues over the holiday and Facility requires daily Collection.

B. Company must be prepared to review with City its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement at least 30 days prior to the start of service

under this Agreement, and once annually upon 30-day written notice requesting this review. More frequent reviews may be required if operations are not satisfactory, based on documented observations or reports of complaints. If the operations plan is determined by City to be inadequate, Company must revise its plan, incorporate any changes into a revised plan, and review that revised plan with City within 30 calendar days.

3.7.2 Vehicles

A. General. Company must provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms. Any additional vehicles or routes that may be required to meet the service standards during the term of this Agreement must be provided at Company's sole expense. Company must 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 shall use Bin Collection vehicles powered by liquefied natural gas (LNG) or compressed natural gas (CNG) only. Rolloff Box Collection or other vehicles shall use LNG or CNG as required by the SCAQMD or Air Resource Board regulations. Company will Collect from Bins using front loaders. At no time may Company use vehicles for the Collection of Solid Waste (Bin, Rolloff or other) in the City that are more than 10 years old. Company must be in compliance with all rules and regulations currently in force or as they may be revised or implemented during the contract term, including SCAQMD Rule 1193, and the Air Resource Board's emission standards for Refuse removal vehicles. No rate adjustments will be made for changes in SCAQMD or Air Resource Board regulations. All vehicles used by Company in providing Solid Waste Collection services must be registered with the California Department of Motor Vehicles. All such vehicles must have watertight bodies designed to prevent leakage, spillage or overflow.

C. Vehicle Identification. Vehicles must be marked as directed by City. Company may be asked to include Company's name, local telephone number, and a unique vehicle identification number designed by Company. Required markings must be prominently displayed on all vehicles, in letters and numbers no less than three inches high. Vehicles must all be painted in a standard color.

D. Vehicle as City Billboard. Company must dedicate one (and, if requested, two) sides of all Collection vehicle packer bodies to display a City billboard, with dimensions as determined by City. Company is responsible for affixing and removing this signage and for production costs once per contract year (April 1 to March 31), up to two sides. City will pay for all design costs and for re-signing more than once per year. Company may not allow any other advertising on its Collection vehicles.

E. Cleaning and Maintenance

1. Company must maintain all of its properties, vehicles, facilities, and equipment used in providing service under this Agreement in a safe, neat, clean, and operable condition at all times.

2. Vehicles used in the Collection of Solid Waste shall be painted, washed, and steam-cleaned on a regular basis in order to present a clean appearance. City may inspect vehicles at any time to determine compliance with this Agreement. Company will also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. Company agrees to replace or repair, to City's satisfaction, any vehicle that City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

3. Company must repaint all vehicles used in the Collection of Solid Waste within 60 days following notice from City, if City determines that their appearance warrants painting. City may not request that vehicles be painted more than once every three years.

4. Company must inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in an unsafe or excessively noisy condition, must be removed from service until repaired and operating properly. Company must reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. Company must keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and make those records available to City upon request.

5. Company must repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause so as to maintain all equipment in a safe and operable condition. Company must maintain accurate records of repair, which shall include the date and

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

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

F. Operation. Vehicles must be operated in compliance with the California Vehicle Code, and all applicable local ordinances. Company may not load vehicles in excess of the manufacturer's recommendations or limitations imposed by state or local weight restrictions on vehicles.

Equipment must comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205, and other applicable noise control regulations, and must incorporate noise control features throughout the vehicle. In no event may the noise level of equipment used for Collection exceed 75 dB when measured at a distance of 25 feet from the vehicle, five feet from the ground. Company must submit to City, upon City's request, a certificate of noise level testing of all vehicles by an independent testing entity. Company must store all equipment in safe and secure locations in accordance with City's zoning regulations.

G. City Inspection Per Code. City may cause any vehicle used in the 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 applicable provisions of the State Vehicle Code, including all smog equipment requirements. City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle that City has directed to be removed from service may be returned to service until it conforms to the State Vehicle Code, and City approves its return to service.

H. Vehicle Inspections. Company must submit the Safety Compliance Report/Terminal Record Update from its Biennial Inspection of Terminal, or BIT. If Company receives a terminal rating below satisfactory, Company is in violation of this Agreement. Company has the time allowed by the Department of California Highway Patrol ("CHP") to cure violations and to bring the terminal rating up to satisfactory. If the

CHP does not adjust the rating to satisfactory or better within six months, then Company will be considered in default, and City may terminate this Agreement.

I. Correction of Defects. Following any inspection, the Director of Public Works and Transportation has the right to cause Company, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The Director of Public Works and Transportation's determination may be appealed to the City Council, which decision will be final.

3.7.3 Litter Abatement

A. Minimization of Spills. Company must use due care to prevent Solid Waste or fluids from leaking, or being spilled or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or are spilled during Collection, Company must promptly clean up those materials. Each Collection vehicle must carry a broom and shovel at all times for this purpose.

Company may not transfer loads from one vehicle to another on any public street without City's prior written approval, 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.

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

3.7.4 Agreement Administration and Performance Monitoring

City has the right to observe and review Company's operations and to enter Company's premises at all reasonable hours and with reasonable notice for the purposes of such observation and review.

3.7.5 Personnel

A. Company, and its agents and employees, in the performance of services authorized by this Agreement, acts in an independent capacity and not as an officer, employee, or agent of City.

B. Company shall abide by the provisions of the Beverly Hills Living Wage Ordinance. During the Term of this Agreement, Company shall keep on file sufficient evidence of its employee compensation to enable verification of compliance with the Beverly Hills Living Wage Ordinance. These records shall be made available at the request of City, with reasonable notice, during regular business hours, and shall be retained by Company for a period of three years after the expiration of this Agreement.

C. Company will comply with City background check procedures. All Company employees shall meet the same standard as City employees. Company shall conduct criminal background checks and drivers' license checks, either in-house or through hiring an outside agency. Company will provide any adverse information discovered to City. A criminal record or Department of Motor Vehicles violations are not automatic bars to employment, but require a case by case review by Company and City to evaluate public safety issues. City's decision in such instances shall be final.

D. Company must employ sufficient personnel, qualified by reason of education, training and experience, to discharge adequately all services authorized to be performed by Company under this Agreement. Company must provide service of the highest quality at all times, and personnel retained to perform this Agreement must be courteous to the public, competent, and otherwise fully qualified to fulfill Company's obligations. Company's personnel must have the ability to reasonably communicate with Customers, and all of Company's supervisors must have the ability to speak, read, and understand the English language.

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

F. Company will designate a field supervisor who is experienced in Solid Waste Collection procedures and, if applicable, Recycling programs. Company's field

supervisor will be available to City representatives during all hours of Company's operations.

G. Company must promptly notify City of any replacement or reassignment of managerial or supervisory personnel who are directly involved in the performance of this Agreement.

H. All employees of Company performing services authorized by this Agreement must be dressed in clean uniforms, and no portion of the uniform may be removed while working. Each uniform, or a badge secured thereto, must set forth the name of Company's employee and the name of Company.

I. Company must not discriminate against any employee or applicant for employment because of the employee's or applicant's race, religion, national origin, ancestry, sex, sexual preference, age or physical handicap. Company will designate an individual who will enforce Company's nondiscrimination policies. If requested by City, Company will establish and maintain an Affirmative Action Plan that will describe the methods by which Company will meet its obligations to refrain from discriminatory practices in the hiring and supervision of all employees. Company will maintain records pertaining to the implementation of that plan and will make those records available for inspection by City upon request.

J. All services to be performed by Company under this Agreement will be performed in such a manner as not to disturb the public peace or to create a public nuisance. In this regard, Company will develop and enforce operational policies for its employees to eliminate the following: (i) racing the engine of the Collection vehicle while compacting Solid Waste; (ii) the loud playing of radios; (iii) shouting and yelling by employees; and (iv) parking Collection vehicles in such a manner as to intentionally prevent other vehicles from passing. Company's failure to adhere to these operational policies may subject Company to penalties in accordance with the schedule set forth in Section 10.3 of this Agreement.

3.7.6 Employee/Subcontractor Identification Required

A. Company must provide its employees, Affiliates, and subcontractors with identification for all individuals who may make personal contact with residents or businesses in City. City may require Company to notify Customers yearly of the form of

that identification. Company will provide to City a list of current employees, Affiliates, and subcontractors upon request.

B. City reserves the right to perform through law enforcement agencies a security and identification check upon Company and its present and future employees, in accordance with accepted procedures established by City, or for probable cause. Upon City's request, Company will remove any Company employee from the account with or without cause.

3.7.7 Fees and Gratuities

Company must not, nor will it permit any agent, employee, or subcontractor employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the Collection, transportation, Recycling, processing, or Disposal of Solid Waste except as authorized by this Agreement.

3.7.8 Non-Discrimination

Company may not discriminate in the provision of service on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or state law.

3.7.9 Change in Collection Schedule

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

3.7.10 Report of Accumulation of Solid Waste; Unauthorized Dumping

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

3.8 Transportation, Disposal and Processing

A. Company will transport all Refuse Collected under Section 3.1 to a transfer station, MRF, Transformation Facility or Disposal Site. Unless City obtains ownership of the Solid Waste or Refuse stream as described in Section 2.9, the Disposal Site(s) designated by Company are the sites identified in Section 1.21. Company will make all reasonable efforts to separate Recyclable Materials from Refuse for diversion from landfill Disposal.

B. Company must 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 City in any audits or investigations of those quantities.

C. City reserves the right to designate at a later date the Solid Waste Facility (whether landfill, Transformation Facility, transfer station, processing Facility or Material Recovery Facility). 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 Facility that City designates. If City selects a Disposal Site or other Facility, City or Company is entitled to a rate adjustment to offset an increase or decrease in rates due to a significant change in tip fee or transportation costs.

3.9 Status of Disposal Site

Any Disposal Site used by Company must 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 municipal agencies necessary for it to operate as a Class III Sanitary Landfill and must be in full compliance with those permits.

3.10 Disposal Capacity Guarantee

Company warrants and guarantees to City that Community Recycling and Resource Recovery, Inc. will have capacity at its Material Recovery Facility and Transfer Station for all Solid Waste Collected by Company throughout the term of this Agreement and guarantees that adequate capacity has been contractually reserved for the City's Solid Waste at the Disposal Sites. Company will retain or obtain ownership of this Facility, or obtain contracts with this facility guaranteeing such capacity for the term of this

Agreement. If the capacity at this Facility becomes limited, City-generated Refuse will have priority over all other Refuse received at the Material Recovery Facility, except for Solid Waste received from the City of San Fernando.

3.10 Materials Recovery Facility

Company will send all Refuse Collected to the Community Recycling and Resource Recovery, Inc. Material Recovery Facility for Mixed Waste Processing prior to transferring residual waste to the Disposal Site.

3.11 Dedicated Routes

Solid Waste Collected in the City shall not be commingled in Collection vehicles with Solid Waste from other jurisdictions unless and until Company has obtained written advance approval from City as to Company's method of tonnage allocation.

3.12 Biennial Route Audit

Once the first year and every two years thereafter. Company will conduct an audit of its Collection routes in the City. The biennial route audit, at a minimum, will consist of an independent physical observation by a person, other than the route driver or route supervisor, of each Bin Customer in the City. The biennial route audit information must include, at a minimum, the following information for each account:

- Route Number.
- Truck Number.
- Account Name.
- Account Number.
- Account Service Address.
- Service Level per Billing System (Quantity, Size, Frequency).
- Service Level per Routing System.
- Observed Containers (Quantity and Size).
- Bin condition.
- Proper signage.
- Graffiti.

Within 30 days after the completion of the biennial route audit, Company must submit to City a report summarizing the results of that audit. This summary must include:

- Identification of the routes.
- Truck numbers.
- Number of accounts, by route and in total.
- 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).
- 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.
    - Percentage of the "absolute" change in net monthly Billing as a result of the audit to the total "pre-audit" monthly Billing.

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

The report must also include a description of the changes and Company's plans to resolve the exceptions. The results of the biennial audit must be available for review by City's representative.

3.13 Service Exceptions; Hazardous Waste Notifications

A. Failure to Collect. When Solid Waste is not Collected from a Customer, Company will 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. Company must make a record of the rejected Collection, setting forth the name and

address of the Commercial and Industrial Customer and the reason for refusal to Collect. Company must send copy of this record to City by the next Business Day, unless paragraph (B) below is applicable.

B. Hazardous Waste Inspection and Reporting. Company reserves the right and has the duty under law to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste. Company has the right not to collect Hazardous Waste put out with Solid Waste. Company must seal the container with tape and mark the container to notify City and its Fire Department of the hazard. Company must report the presence of hazardous materials to City's Fire Department and to City's Director of Public Works and Transportation not more than two hours after discovering them. Company must notify other agencies with jurisdiction, if appropriate, of reportable quantities of Hazardous Waste observed in Solid Waste anywhere within City. These may include the California Department of Toxic Substances Control, local emergency response providers, and the National Response Center. Company must follow City guidelines in situations where hazardous materials must be reported to and removed by the Los Angeles County Hazardous Materials Team (HAZMAT).

Within 24 hours after the removal of the hazardous materials from the Container, Company must Collect and Dispose of all Solid Waste remaining in the Container.

In addition to other required notifications, if Company's employees observe any substances that they reasonably believe to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Company will immediately notify the Director of Public Works and Transportation.

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

3.14 Hazardous Waste Management Component

Company must maintain a Hazardous Waste management plan and make it available to City upon request.

ARTICLE 4

OTHER SERVICES

4.1 Customer Billing

A. City is solely responsible for Billing all Customers, effectuating all Collections, and pursuing all delinquent accounts.

B. If City is required, as a result of non-payment, to temporarily terminate service for a Commercial or Industrial account, then City will give written notice to Company of that termination. Company will cooperate with all reasonable requests of City that relate to the Collection of accounts receivable.

4.2 Customer Service

4.2.1 Office Hours

Company will have an office with a live operator and staff available to City, 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. Company must provide City staff with the phone number or pager number of a live person who may be reached 24 hours a day. Company will provide a real-time communication system between City and Company supervisors. Company will provide and maintain all communication equipment.

4.2.2 Missed Pick-ups

When notified of a missed pick-up, Company must Collect the Refuse, Recyclable Materials, Food Waste or Green Waste within 24 hours.

4.2.3 Complaint Documentation

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

Company must log all complaints received by telephone, and the log must include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint, and the action taken by Company to remedy the complaint. All written Customer complaints and inquiries must

be date-stamped when received. All complaints received from Customers or forwarded by City must be initially responded to within 12 hours of receipt.

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

4.2.4 Resolution of Customer Complaints

Disputes between Company and its Customers regarding the services provided under this Agreement may be resolved by City. City's decision will be final and binding.

Intervention by City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against Company.

4.2.5 Government Liaison

Company must designate in writing a "Government Liaison" who will be responsible for working with City's designated representatives to resolve Customer complaints. City has the right to approve Company's designated liaison.

4.2.6 Computer Compatibility

Company must install and maintain a computer system that is compatible with City's system. The system must be capable of linking to City's Customer service system, with read-only access to City's database and with the ability to receive change orders. System must provide electronic time stamping of Customer interfacing and of request/compliant resolution.

4.3 Community Events

At the direction of City, Company must participate in and promote Recycling and other diversion techniques at community events and local activities.

ARTICLE 5

COMPANY COMPENSATION AND RATES

5.1 General

A. The compensation provided for in this Article 5 constitutes the entire compensation due to Company under this Agreement for all services, labor, equipment, materials, supplies, taxes, insurance, bonds, overhead, Disposal, transfer, profit, and all other things necessary to perform all the services required.

B. The rates to be paid to Company during the term of this Agreement are set forth in Exhibit 1. Unless modified by a written amendment executed by the parties, the rates set forth in Exhibit 1 will apply to Company's services under this Agreement.

C. Company will, on the next Business Day, forward to City copies of Disposal tickets from Rolloff Box loads to enable City to bill Customers for Rolloff Box service. Rolloff Box service will be billed as pull, plus dump fee per ton, for Refuse, or processing cost per ton for Recyclables. The maximum fees paid to Company are included in Exhibit 1, as adjusted in accordance with Article 5. If revenue is received for Recyclables, it must be applied as a credit against the pull charge billed to City. Hauler shall provide reasonable documentation of revenue received, and number of tons collected, used to determine Recyclables revenue credit.

D. Company is entitled to retain all proceeds from the sale of Recyclable Materials, with the exception of Recyclables revenues from Rolloff Box loads, which is returned to City pursuant to paragraph C.

E. No later than the fifteenth day of each month, Company will submit to City an invoice of costs incurred during the preceding month for services rendered, plus all supporting documentation that is requested by City.

F. City will review the monthly invoice and supporting documentation that is submitted by Company. Any adjustments that are determined by City to be necessary will be communicated in writing to Company and will be reflected in City's payment to Company.

G. Not later than 30 days after receipt of Company's monthly invoice, City will remit payment for the invoiced amount, plus or minus such adjustments as City

determines are justified following review of the invoice and the supporting documentation.

H. If City fails to notify Company in a timely manner of the closing of a Commercial or Industrial account, then Company will be entitled to receive payment for all services rendered to that account prior to the date of notification.

5.2 Rates as of July 1, 2011

Under the Agreement No. 14-04 between City and Company, dated January 27, 2004 and signed May 14, 2004, Company would have been entitled to request a rate adjustment to be effective as of July 1, 2011. Company waives this rate adjustment; rates under this previous agreement shall remain unchanged from July 1, 2010 until the first rate adjustment permitted under this Agreement as of July 1, 2012, at which time Company may request a rate adjustment in accordance with Sections 5.3, 5.4 and 5.5 below.

5.3 Initial Rates

The rates through June 30, 2012, may not exceed those set forth in Exhibit 1, unless modified by a written amendment to this Agreement. Unless and until the maximum rates set forth on Exhibit 1 are adjusted, Company will provide the services required by this Agreement and will charge no more than the maximum rates authorized by Exhibit 1, except as provided in this article.

5.4 Schedule of Future Adjustments

Beginning with the Rate Year commencing on July 1, 2012, and for all subsequent Rate Years, Company may request an annual adjustment to the maximum rates shown in Exhibit 1. Company must submit its request in writing, to be delivered to City in person or by certified mail, at least 90 days prior to the start of the new Rate Year, based on the method of adjustment described in Section 5.5. Failure to submit a written request at least 90 days prior to the start of the new Rate Year will result in Company waiving its right to request an increase for the subsequent year, or to request that the increase be made up in a future year. City may decrease the rates in accordance with Section 5.5 if the weighted rate adjustment index decreases. If any rates would decline based upon Section 5.5 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.

5.5 Method of Adjustments

In accordance with Section 5.4, Company may request an annual adjustment to the maximum rates according to the formulas and example calculations shown in Exhibit 2, subject to review and approval of City. Future adjustments will be effective on July 1 of any Rate Year.

5.5.1 Bin Rate Adjustment Method

The approved Bin rates consist of the following components and will be established at the start of the Agreement by the following weightings and thereafter adjusted using changes in the following rate adjustment indices:

Cost Category	Weighting	Rate Adjustment Index (1)
Labor	23%	Employment Cost Index CIU 2010005200000I, Total Compensation, Private Industry, Index number, Transportation and material moving
Fuel	5%	Producer Price Index WPU 0531, Fuels and related products and power, natural gas
Equipment	20%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Disposal (includes processing costs)	33%	Change in actual cost or change in Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average, whichever generates larger decrease or smaller increase.
All Other	19%	50% of change in Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average
Total	100%	

Step One – Calculate the percentage increase or decrease in each index. The increase or decrease in the indices will be based on the change in the average annual index between the calendar year ended the December prior to the Rate Year anniversary date and the prior calendar year (See Exhibit 2C).

Step Two – Multiply the percentage changes for each rate adjustment component by that component's weighting and add the percentages together to get the overall change to the maximum rates.

Step Three – Multiply the percent change in maximum rates or 5%, whichever is lower, by the existing maximum rates to calculate the rate increase or decrease. Add the rate increase or decrease to the existing maximum rates to derive the newly adjusted maximum rates.

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

5.5.2 Rolloff Box Rate Adjustment Method

The approved Rolloff Box rates consist of the service component, which is the pull rate, and the Disposal component, which is the permitted charge per ton multiplied by the actual tons disposed of or processed.

Disposal/Processing Component – The Refuse transfer and Disposal fee per ton, commingled Recyclables processing fee per ton, and Mixed Waste Processing fee per ton will be adjusted by the amount of the change in actual cost or the change in Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average, whichever is lower.

Service Component - The service component (the pull fee charged in addition to the Disposal or "dump fee" component) will be established at the start of the Agreement by the following weightings and thereafter adjusted using changes in the following rate adjustment indices:

Cost Category	Weighting	Rate Adjustment Index
Labor	34%	Employment Cost Index CIU 2010005200000I, Total Compensation, Private Industry, Index number, Transportation and material moving
Fuel	8%	Producer Price Index, WPU057303 not seasonally adjusted, Fuels and related products and power, #2 diesel fuel (will be changed to Producer Price Index WPU 0531, Fuels and related products and power, natural gas upon implementation of natural gas rolloff vehicles)
Equipment	30%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
All Other	28%	50% of change in Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average
Total	100%	

Step One – Calculate the percentage increase or decrease in each index. The increase or decrease in the indices will based on the change in the average annual index between the calendar year ended the December prior to the Rate Year anniversary date and the prior calendar year (See Exhibit 2C).

Step Two – Multiply the percentage changes for each rate adjustment component by that component's weighting and add the percentages together to get the overall change to the maximum rates.

Step Three – Multiply the percent change in maximum rates by the then existing maximum rates to calculate the rate increase or decrease. Add the rate increase or decrease to the existing maximum rates to derive the newly adjusted maximum rates.

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

5.6 Extraordinary Adjustments

Company may request an adjustment to maximum rates at times other than those specified in Section 5.4 in the event of extraordinary changes in the cost of providing service. Such extraordinary changes may not include changes in tipping fees for Refuse Disposal, or Recyclable Material, Food Waste or Green Waste processing costs, changes in the market value of Recyclables from the values assumed by Company, inaccurate estimates by Company of its proposed cost of operations, the implementation or elimination of mandatory Recycling requirements by City or State (including requirements related to or developing from California Health and Safety Code Section 38500-38599), or the inability of Company to Dispose of any Solid Waste at a selected landfill, whether due to closure of the Disposal Site or otherwise. The only exception that would authorize an extraordinary adjustment based upon changes to the Refuse Disposal gate rate would be an increase in a direct per ton surcharge assessed at the Disposal Site by federal, state or local regulatory agencies after the Effective Date of this Agreement. Company is expected to comply with SCAQMD Rule 1193, and the Air Resource Board's proposed new emission standards for Refuse removal vehicles, as well as other federal, state and local laws and regulations that may be enacted during the term of this Agreement, for no additional compensation. No adjustment will be considered or approved as a result of unionization of the work force or a change in wage rates or employee benefits. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively.

For each request for an adjustment to the maximum rates under this section, Company must prepare a schedule documenting the extraordinary changes in costs. The request must be prepared in a form acceptable to City with support for assumptions made by Company in preparing the estimate. Contractor 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 will review Company's request and, in City's sole judgment, make the final determination on the appropriate amount of the adjustment, if any.

City may request a copy of Company's annual financial statements in connection with City's review of Company's rate adjustment request. City shall review Company's request and, in City's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in 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

A. City may hold a public hearing on or about the second anniversary of the Operative Date of this Agreement, and annually thereafter, at which hearing Company must participate, to review the Solid Waste Collection, source reduction, processing 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 ensure the continuation of advanced Solid Waste Collection, source reduction, and Recycling and Disposal systems, and to ensure that services are being provided with adequate quality, effectiveness and economy.

B. Forty-five days after receiving notice from City of a Solid Waste services and performance review hearing, Company must, at a minimum, submit a report to City containing the following:

(1) Recommended changes in service or new services to improve City's ability to meet the goals of the Act and to contain costs and minimize impacts on rates.

(2) Specific plans of Company for the provision of changed or new services.

(3) Results of the most recent route audit as described in Section 3.12.

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

D. Topics for discussion and review at the public hearing may include, but will 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 meeting or exceeding the Act's goals, regulatory constraints, and Company's performance. City and Company may each select

additional topics for discussion at any Solid Waste services and performance review hearing.

E. Not later than 60 days after the conclusion of the public hearing, City may issue a report. As a result of the review, City may require Company to provide expanded or new services within a reasonable time and for reasonable rates and compensation, and City may direct or take corrective actions for any performance inadequacies.

6.2 Performance Satisfaction Survey

If requested by City, Company will conduct a survey at Company's expense in preparation for the public hearing. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Company. The survey must be distributed to a minimum of 10% of the Customers, selected at random. Company will obtain City approval of survey content and format prior to distribution and will incorporate City content, if requested by City. Alternatively, City may choose to draft the survey. Survey results must be made available to City 30 days prior to the public hearing. City will instruct Company whether surveys shall be returned to City or to Company. If requested by City, Company shall summarize and tabulate results.

ARTICLE 7

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

7.1 General

Company must maintain such accounting, statistical and other records related to its performance under this Agreement as may be necessary to prepare the financial statements and other reports required by this Agreement. Company must also conduct data collection, information and record keeping, and reporting activities necessary to comply with applicable laws and regulations and to meet the reporting and Solid Waste program management needs of City, including the reporting obligations imposed by the Act. In this regard, the requirements set out in this and other articles of this Agreement will not be considered limiting or necessarily complete. This article is intended only to highlight the general nature of records and reports and does not precisely define what records and reports are to be submitted, or their content. Upon the written direction of City, the records and reports to be maintained and provided by Company in accordance with this and other articles of this Agreement must be adjusted in number, format, or frequency.

7.2 Records

7.2.1 General

A. Company must maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City regarding the conduct of Company's business. Adequate security must be maintained to protect records from events that can reasonably be anticipated, such as a fire, theft or earthquake. Electronically-maintained data and records must be protected and backed up. All records must be maintained for five years, and the last five years of records must be maintained for an additional five years after the expiration of this Agreement. After minimum holding periods are met, Company will notify City 90 days before destroying records.

B. The records of other entities conducting operations authorized by this Agreement must be provided or made available to City's representatives during normal business hours. City may review or use any of the records described in this section for any purpose. Such records include, but are not limited to, financial, Solid Waste and

Recyclable Materials, CERCLA and Disposal records. Failure to provide these records may be considered a material breach of this Agreement.

7.2.2 Financial Records

Financial records must be maintained. Expense and revenue information for City must be segregated from other geographical areas served by Company.

7.2.3 Solid Waste Service Records

Records relating to the following matters must be maintained by Company:

a) Customer services.

b) Routes.

c) Facilities, equipment and personnel.

d) Complaints.

e) Missed pickups.

f) Number of Refuse, Food Waste, Recycling, and Green Waste Containers.

g) Tons Collected, processed, diverted, and Disposed by type of service, waste stream, and Customers.

h) Weight of each category of Recyclable Material recovered at a MRF, if a MRF is used.

7.2.4 CERCLA Defense Records

City views its ability to defend against claims asserted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and any related litigation as a matter of great importance. For this reason, City must have the ability to prove where Solid Waste Collected in City was taken for Disposal, as well as where it was not taken. Company must implement and maintain data retention and preservation systems that document where Solid Waste Collected in City was landfilled (and therefore

establish where it was not landfilled) for not less than five years following the termination of this Agreement, including extensions. Company will notify City Clerk and City Attorney before destroying any such records and offer to provide all records to City. The provisions of this section will survive the expiration of the term of this Agreement during which Solid Waste Collection services are provided.

7.2.5 Other Program Records

Records for other Solid Waste programs and services will be tailored to specific needs. In general, they will include:

- Plans, tasks, and milestones.
- Accomplishments, such as activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

7.2.6 Cost of Audits

City may conduct an audit of Company at any time. 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.

Company will fund an audit after the first year and every three years thereafter. The first hauler-funded audit, to be performed during 2013, will be based on Company's reports and records from April 1, 2011 through calendar year 2012. Audits will be performed every third year thereafter, (e.g., the audit performed during 2016 will be based upon reports and records from calendar year 2015, and may include 2012 and 2013 if requested by City). Company will reimburse to the City the cost of such audits not to exceed $80,000 for the first audit, and not to exceed $50,000 for each subsequent audit in 2013 dollars. The $50,000 not to exceed amount shall be increased annually by the change in CPI, as measured from the as of December 2012 and adjusted to the December preceding the initiation of the audit. Costs incurred by Company for conducting its own route audits, as required under this Agreement, are not included as part of this audit cost.

If an audit discloses 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 promptly notify the City of service

level or other customer changes, City may expand the scope of the audit and also recover additional audit costs from the Company.

City retains the right to audit Company after the term of this Agreement, provided City initiates audit within twelve months of the termination of the Agreement. If the last full calendar year under the Agreement would have been subject to the biennial audit, Company shall fund this final audit as stated above. City may not release the performance bond in accordance with Section 8.7 until the audit has been completed and reviewed and any adjustments required by the audit have been made.

7.2.7 Payments and Refunds

If an audit by City discloses for the period under review that compensation to Company was overpaid, or that Customers were overcharged, due to Company's failure to promptly notify City of service level or other Customer changes, or for any other reason, then, in addition to any other remedy that may be available to City, Company must pay to City any overpayment of compensation or refund any overcharges directly to the Customers, or both. Any refunds to Customers will be due and payable 30 days following the date of the audit.

7.3 Reports

7.3.1 Report Formats and Schedule

A. Records must be maintained in a format that facilitates the use of data contained in them to structure reports, as needed, that can be used, among other things, to:

1. Establish rates and evaluate the efficiency of operations.

2. Evaluate past and current progress towards achieving the Act goals and objectives.

3. Determine the need for adjustments to Solid Waste programs.

4. Evaluate Customer service and complaints.

B. Company may propose report formats that are responsive to the objectives of each report. The format of each report requires City approval. Company will submit

all reports on computer discs or by electronic means in a format that is compatible with City's software and computers at no additional charge, if requested by City. When requested by City, an authorized Company official will certify, under penalty of perjury, that the report being submitted is true and correct.

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

All reports must be submitted to:

Director of Public Works and Transportation
Department of Public Works and Transportation
345 North Foothill Blvd.
Beverly Hills, CA 90210

7.3.2 Monthly Reports

The following information is the minimum required to be reported monthly:

A. Tons of Solid Waste Collected by Company for the previous month, sorted by type of service (Refuse, Food Waste, Recycling, Green Waste) and by type of Customer Bin, Rolloff Box), and the facilities where the tonnage was Disposed of or processed. Bulky Items must be separately reported.

B. Materials recovered. Statement showing kinds of material and the quantity sold (in tons).

C. Narrative summary of problems encountered (including scavenging) and actions taken with recommendations for City, as appropriate.

D. Warning notices issued for contaminated Recyclable Materials and Green Waste Containers.

7.3.3 Quarterly Reports

Quarterly reports should contain, at a minimum, the information required in the monthly reports plus the following:

A. Complaint summary for the quarter, on a computer disc, identifying the nature of complaints.

B. Other information or reports that City may reasonably request.

7.3.4 Annual Report

The annual report will essentially combine the information contained in the monthly and quarterly reports, and will also include:

A. A complete inventory of equipment used to provide all services (such as vehicles, Containers by size, and the type of waste Collected by each type of Container).

B. Results of route audits, including a summary of the number of Containers by size and service level, and type of service (Refuse, Food Waste, Recycling, Green Waste), and Rolloff Box pulls per month by material type.

C. CERCLA records required under Section 7.2.4.

D. General information about Company, including a current list of officers and directors, the most recent annual report and other periodic public financial reports of Company, its subsidiaries and Affiliated companies, that may perform services under this Agreement.

E. Copies 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

A. City may, at its option, request from Company annual audited financial reports and statements for the most recently completed fiscal year in connection with a

rate adjustment, performance audit, Billing audit, or verification of other information required under this Agreement.

B. Financial statements must include a supplemental schedule showing Company's results of operations, including the specific revenues and expenses related to the operations under this Agreement, separated from others included in those financial statements. The supplemental schedule may be audited, reviewed, or compiled, as determined by City. The financial statements and footnotes must 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 to practice in the State of California. The cost of preparation of the financial statements and audit will be borne by Company as a direct cost of service.

7.4 Adverse Information

A. Reporting Adverse Information. Company must provide City with two copies of all reports, pleadings, applications, notifications, notices of violation, or other communications specifically related to Company's performance of services under this Agreement, that are submitted by Company to, or received by Company from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission, or any other federal, state or local agency, including any federal or state court. Copies must be submitted to City simultaneously with Company's filing or submission of such matters to those agencies. Company's routine correspondence to those agencies need not be submitted to City, but it must be made available to City promptly upon City's written request.

B. Failure to Report. The refusal or failure of Company to file any required report, or to provide required information, or the inclusion of any materially false or misleading statement or representation by Company in any required report will be deemed a material breach of the Agreement, as described in Article 10, and will subject Company to all remedies that are available to City.

7.5 Right to Inspect Records

City has the right to review the documents or records necessary to evaluate annual reports, compensation applications, and Company's performance under this Agreement. Company's failure to make those records readily available will be deemed a material breach of this Agreement.

ARTICLE 8

INDEMNIFICATION, INSURANCE AND BONDS

8.1 Indemnification

A. Company will indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of 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 (a) the negligence or willful misconduct of Company, its officers, employees, agents, subsidiaries, Affiliates, or subcontractors in performing services under this Agreement; (b) the failure of Company, its officers, employees, agents, subsidiaries, Affiliates or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, or applicable permits and licenses; or (c) the acts of Company, its officers, employees, agents, subsidiaries, Affiliates, 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 applies 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 does not extend to matters resulting from the Indemnitees' sole negligence, willful misconduct, or breach of this Agreement. Company will, upon demand of City, at Company's sole cost and expense, defend (with attorneys acceptable to City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the events referenced above.

B. Company, upon demand of City, made by and through City Attorney, will protect City and appear in and defend the Indemnitees in any claims or actions by third parties, whether judicial, administrative, or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," or the limits of City's authority with respect to the grant of licenses or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide Solid Waste services in City. This Section 8.1 will survive the expiration

of the term during which Collection services are to be provided under this Agreement. City and Company will confer following any trial to decide jointly whether to appeal or to oppose any appeal. If City and Company jointly agree to appeal, or to oppose any appeal, City and Company will share equally the costs of appeal. If either City or Company decide to appeal, or to oppose an appeal, and the other decides not to appeal, or to oppose an appeal, the party that decides to appeal, or to oppose an appeal, will bear all fees and costs of the appeal or the opposition to the appeal.

C. Company's duty to indemnify and defend against the above-referenced events arising during the term of this Agreement, and as it may be extended, will survive the expiration or earlier termination of this Agreement.

8.2 Hazardous Substances Indemnification

A. Without regard to any insurance coverage or requirements, and without limiting the above-referenced indemnification obligation in any way, Company will, to the maximum extent permitted by law, defend (with counsel acceptable to City), reimburse, indemnify, and hold harmless City and its past and present officers, council members, employees, consultants and agents ("Indemnified Parties") from and against all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, attorneys' fees, consultant fees, penalties and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of, or are alleged to arise out of, or in any way relate to any action, inaction or omission of Company that:

1. Results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible, or in any manner obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise clean up, any hazardous contaminant (as defined below); or

2. Relates to material Collected, transported, Recycled, processed, treated or Disposed of by Company.

B. Company's obligations under this section apply, without limitation, to:

1. Any Claims brought pursuant to or based on the provisions of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 9601 et seq., the California Hazardous Substances Account Act (California Health & Safety Code Sections 25300 et seq.), the California Hazardous Waste Control Laws (California Health and Safety Code Sections 25100 et seq.), the California Porter-Cologne Act (California Water Code Section 13000 et seq.), and all amendments thereto and regulations thereunder, and any other federal, state, regional, or local environmental statutory or regulatory provisions.

2. Any Claims based on or arising out of, or alleged to be arising out of, the ownership, use, lease, sale, design, construction, maintenance or operation by Company of any Facility.

3. Any Claims based on or arising out of, or alleged to be arising out of, the marketing, sale, distribution, storage, transportation, Disposal, processing or use of any materials recovered by Company.

4. Any Claims based on or arising out of, or alleged to be arising out of, the breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

C. The foregoing indemnity and defense obligations apply irrespective of the negligence or willful misconduct of Company or any Affiliate or subsidiary of Company.

D. For purposes of this section, the term "hazardous contaminant" means any "hazardous material," as that term is defined under California Health & Safety Code Section 25501(1); any "Hazardous Substance," as that term is defined in this Agreement or under California Health & Safety Code Sections 25281(f), 25501(e), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "Hazardous Waste," as that term is defined under Title 42, Section 6093(5) of the United States Code and under California Health & Safety Code Section 25550(m); any chemical that the Governor has identified as a chemical known to the state to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "hazardous contaminant" will be deemed to include any additional substances that are identified in amendments to the above-

referenced statutory and regulatory provisions, whether adopted before or after the date of execution of this Agreement.

E. The provisions of this section will be given the broadest possible interpretation and will survive the expiration or earlier termination of this Agreement.

8.3 Diversion Goal Indemnification and Guarantee

A. To the extent authorized by law, Company agrees to protect and defend Indemnitees with counsel selected by Company and approved by City, to pay all costs and fees (including, without limitation, fees and charges of engineers, architects, attorneys and other professionals, and costs of exhibits, reports and other similar defense expenses) and to indemnify and hold harmless City from and against all fines or penalties imposed by CalRecycle if the source reduction and Recycling goals, or any other requirements of the Act, are not met by City with respect to the waste stream Collected under this Agreement and agrees to protect and defend Indemnitees with counsel selected by Company and approved by City, to pay all costs and fees (including, without limitation, fees and charges of engineers, architects, attorneys and other professionals, and costs of exhibits, reports and other similar defense expenses) and to.

B. Company warrants and represents that it is familiar with City's waste characterization study set forth in City's Source Reduction and Recycling Element ("SRRE"), and that it has the ability to and will provide sufficient programs and services to ensure that City will meet or exceed the diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for diversion, and any other requirements) set forth in the Act, with respect to that portion of the Solid Waste generated in the City that is the subject of this Agreement.

C. The provisions of this section will be given the broadest possible interpretation and will survive the expiration or earlier termination of this Agreement.

8.4 Insurance

Company shall maintain in effect the insurance required by this Section 8.4 throughout the term of this Agreement. City does not waive any rights against Company that it may have under the above-referenced hold harmless agreements because of acceptance by City, or the deposit with City by Company, of the insurance policies described below in

this section. The insurance required is in addition to and separate from all other obligations of Company contained in this Agreement.

A. Minimum Scope of Insurance. Coverage must 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 California Labor Code and Employers' Liability insurance.

B. Minimum Limits of Insurance. Company must 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 will apply separately to this project location, or the general aggregate limit will be twice the required occurrence limit. Such limits can be achieved through a combination of primary and excess liability policies.

2. Automobile Liability: Five Million Dollars ($5,000,000) per accident for bodily injury and property damage. Such limits can be achieved through a combination of primary and excess liability policies.

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

C. Deductibles and Self-Insured Retentions. All deductibles or self-insured retentions must be declared to and approved by City. At the option of City, Company may either: (1) cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or (2) procure a bond guaranteeing payment of all losses and expenses of related investigations, claim administration, and defense in the amount of those deductibles or self-insured retentions.

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

1. General Liability and Automobile Liability Coverages.

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

b) Company's insurance coverage must be primary insurance with respect to the Indemnitees. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers will be excess of Company's insurance and will not contribute with it.

c) Any failure to comply with reporting provisions of the policies will not affect coverage provided to the Indemnitees.

d) Coverage must state that Company's insurance will 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 must agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by Company for City.

3. All Coverages. Each insurance policy required by this section must be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits unless 30 days' prior written notice by certified mail, return receipt requested, has been given to City.

E. Acceptability of Insurers. The insurance policies required by this section must 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 Guide of size category VII or larger, and a rating classification of A or better.

F. Verification of Coverage. Prior to the performance of any work under this Agreement, and at all times during its term, Company must maintain on file with the City Clerk a certificate or certificates of insurance, evidencing that the above-referenced policies are in effect and in the required amounts. These policies must contain an endorsement naming City, its appointed and elected officials, officers, employees and agents, as additional insureds. The policies must also state that the insurance coverage will not be canceled or reduced except on 30 days' prior written notice to City, and must specifically state that the coverage contained in the policies affords insurance as required by the terms of this Agreement. Company agrees that it will not cancel or reduce that insurance coverage.

Company must furnish City with certificates of insurance and with original endorsements effecting the coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements must be on forms provided by or acceptable to City and must be received and approved by City before work commences. City reserves the right at any time to require complete, certified copies of all required insurance policies.

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

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

H. Required Endorsements

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

> "Thirty (30) days prior written notice by certified mail, return receipt requested, must 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:
>
> Director of Public Works and Transportation
> Department of Public Works and Transportation

City of Beverly Hills
345 Foothill Road.
Beverly Hills, CA 90210-3808

2. The General Liability policy must contain endorsements in substantially the following form:

a) "Thirty (30) days prior written notice must 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:

Director of Public Works and Transportation
Department of Public Works and Transportation
City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210-3808

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 insurance will be considered excess insurance only."

d) "Inclusion of the City as an insured will not affect the City's rights as respects any claim, demand, suit or judgment brought or recovered against Company. This policy will protect Company and the City in the same manner as though a separate policy had been issued to each, but this will not operate to increase Company's liability as set forth in the policy beyond the amount shown or to which 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 under this Agreement for 100 years after the end of the term during which Collection services are to be provided. Company must

notify City's Risk Manager and City Attorney before destroying copies of these policies. This provision will survive the expiration of the period during which Collection services are to be provided under this Agreement.

2. If any services are delegated to another company or subcontractor, Company must require that company or subcontractor to provide statutory workers' compensation insurance and employers' liability insurance for all of the other company's or subcontractor's employees engaged in the work in accordance with this section. The liability insurance required by this section must cover each company or subcontractor, or the company or subcontractor must furnish evidence of liability insurance that meets all of the requirements of this section.

3. Company must comply with all requirements of the insurers issuing policies. The carrying of insurance will not relieve Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against Company, or any subsidiary, Affiliate, or subcontractor, on account of any occurrence related to this Agreement, Company must promptly report the facts in writing to the insurance carrier and to City.

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

8.5 Performance Bond

Concurrently with the execution of this Agreement, Company must deliver to City a performance bond issued by an admitted surety insurer with a Best's Insurance Guide Rating of not less than A-VII. The performance bond must be in the amount of Five Hundred Thousand Dollars ($500,000), similar to the form provided in Exhibit 4, and must secure 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 performance bond must contain the original notarized signature of an authorized officer of the surety and be accompanied by a certified and current copy of that officer's power of attorney. The performance bond must be unconditional and remain in force (through annual renewals) during the term of the Agreement. The performance bond will be null and void at the expiration of the term of this Agreement only if Company faithfully performs all terms and conditions of this Agreement.

8.6 Forfeiture of Performance Bond

If Company for any reason becomes unable, or fails in any way, to perform as required by this Agreement, City may declare a forfeiture of all or a portion of the performance bond that is necessary to compensate and make City whole. Upon full or partial forfeiture of the performance bond, Company must restore the performance bond to its face amount within 30 days of City's declaration. Failure to restore the performance bond to its full amount within 30 days will be a material breach of contract.

8.7 Performance Security Beyond Service Term

Some Agreement requirements extend beyond the term of this Agreement and other requirements, such as minimum diversion rates, will not be substantiated until after the final service date. Therefore, Company shall not terminate the performance bond and will renew it to ensure continuous availability to City, until receiving a written release from City. Permission from City to discontinue holding this performance security does not relieve Company of payments to City or other contractual obligations that may be due, or may become due.

8.8 Property Damage

Company is responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: City's driving surfaces, whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

Any physical damage to public or private property caused by Company's employees, or resulting from or directly attributable to any of its operations, must be expeditiously repaired, or caused to be repaired, by Company at Company's sole expense. If the damage is to public property, and City determines that it (City) should cause the repairs to be completed, Company shall pay to City all costs incurred by City in completing the repairs, within ten (10) days of demand for payment from City.

8.9 Pavement Damage

Company is responsible for damage to City's driving surfaces, whether paved or not paved, beyond normal wear and tear. Company understands that performance under this Agreement may involve the operation of its Collection vehicles over private roads and

streets. Disputes between Company and its Customers over damage to private pavement are civil matters, and complaints of damage will be referred to Company as matters within the scope of Section 8.1.

ARTICLE 9

CITY'S RIGHT TO PERFORM SERVICE

9.1 General

A. In addition to all other rights and remedies of City under this Agreement, at law or in equity, if Company, for any reason, fails, refuses, or is unable to Collect, Recycle, process, transport, or Dispose of any Solid Waste as required by this Agreement, at the time and in the manner provided, for a period of more than 72 hours, and if, as a result, Solid Waste accumulates in City in a manner that endangers the public health, safety, or welfare, then City has the right, but not the obligation, upon notice to Company and during the period of such emergency as determined by City, (1) to perform, or cause to be performed, any of those services with its own or other personnel, without liability to Company; and (2) to take possession of any or all of Company's land, equipment, and other property that is used or useful in the Collection and transportation of Solid Waste, and to use that property to Collect and transport any Solid Waste generated within City that Company would otherwise be obligated to Collect, transport, and properly Dispose of or process.

B. Notice of Company's failure, refusal or neglect to Collect, transport and properly Dispose of or process Solid Waste may be given verbally by telephone to Company at its principal office and will be effective immediately. Written confirmation of that verbal notification must be sent to Company within 24 hours.

C. Company agrees that in such event:

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

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

3. City may immediately engage any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees previously or then employed by Company. Company will, if City so requests, furnish to

City the services of any management or office personnel employed by Company whose services are necessary or useful for Solid Waste Collection, transportation, processing, and Disposal operations and for the Billing and Collection of fees for these services.

4. City will assume complete responsibility for the proper and normal use of Company's equipment and facilities while in its possession.

D. If the interruption or discontinuance in service is caused by any of the events listed in Section 10.4, City will pay to Company the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Company has rendered bills in advance of service for the category of service involved.

9.2 Billing and Compensation to City During City's Possession

During such time that City is providing Solid Waste services, as provided above, City will bill and Collect payment from all users of the above-mentioned services, as described in Section 4.1, and Company shall not be entitled to any compensation. Further, Company will reimburse City for all costs and expenses incurred by City beyond the amount billed and received by City after taking possession of the above-mentioned equipment and property for Solid Waste service. This reimbursement will be made from time to time after submission by City to Company of a statement listing those costs and expenses, but in no event later than five working days after each submission.

9.3 City's Right to Relinquish Possession

City may at any time in its discretion relinquish possession of any of the above-referenced property to Company and demand that Company resume the Solid Waste services authorized by this Agreement, and Company will be obligated to resume the same.

9.4 City's Possession Not A Taking

City's exercise of its rights under this article: (1) does not constitute a taking of private property for which compensation must be paid; (2) will not create any liability on the part of City to Company; and (3) does not exempt Company from the indemnity provisions of Article 8, which are intended to extend to circumstances arising under this article; provided that Company is not required to indemnify City against claims and damages arising from the sole negligence of City, its elective and appointive boards, commissions,

officers, employees and agents in the operation of Company's Collection vehicles during the time that City has taken possession of those vehicles.

9.5 Duration of City's Possession

City's right under this article to take temporary possession of Company's facilities and equipment, and to provide Collection services, will terminate when City determines that those services can be resumed by Company, or when City no-longer reasonably requires the use of those facilities and equipment.

ARTICLE 10

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

10.1 Events of Default

Where Company's violation is determined to involve any of the following, each of which is deemed to constitute a material provision of this Agreement, City may invoke the remedies authorized by this Agreement:

A. Fraud, Deceit or Misrepresentation. Company engages in, or attempts to practice, any fraud or deceit upon City, or makes a misrepresentation to City regarding material information.

B. Insolvency or Bankruptcy. Company becomes insolvent, is unable or unwilling to pay its debts, files a bankruptcy petition, or takes steps to liquidate its assets.

C. Failure to Maintain Coverage. Company fails to provide or to maintain the Workers' Compensation, liability, or indemnification coverage required by this Agreement.

D. Violations of Regulations. Company violates any orders of any regulatory body having jurisdiction over Company relating to this Agreement; provided that Company may contest any such orders by appropriate proceedings conducted in good faith, in which case no breach of this Agreement will be deemed to have occurred until a final decision adverse to Company is entered.

E. Failure to Perform. Company ceases to provide all or a portion of the Collection, processing, or Recycling services, or any other Solid Waste handling services required under this Agreement for a period of two consecutive days or more, except to the extent excused under Section 10.4.

F. Failure to Pay. Company fails to make any payments required under this Agreement or refuses to provide City, within 10 days of a demand, with required information, reports or records in a timely manner as provided for in this Agreement.

G. Failure to Cooperate with Audits. Company fails to complete, perform, or cooperate with any audit that is required or authorized by this Agreement; provided

that City must provide Company with written notice of that failure, and Company will have 30 days to cure any deficiency.

H. Failure to Submit Reports or Documentation. Company fails to complete or to provide reports or documents to City as required by this Agreement within 60 days of their due date and 30 days after receipt of written notice from City that such reports or documents have not been submitted.

I. Acts or Omissions.

1. Any other act or omission by Company relative to the services provided under this Agreement that violates the terms, conditions or requirements of this Agreement, the Act, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder, or Company's failure to remedy any such violation within the time specified in City's written notice of the violation or, if Company cannot reasonably remedy the breach within the time specified in that notice, then Company's failure to commence to remedy such breach within the time set forth and to thereafter diligently effect such remedy.

2. Any situation in which Company, or any of its officers, directors or employees, is found guilty of any crime related to the performance of this Agreement, anti-trust violations, illegal transport or Disposal of hazardous or toxic materials, or bribery of public officials. The term "found guilty" is deemed to include any judicial determination that Company, or any of its officers, directors or employees, is guilty, as well as any admission of guilt by Company or any of its officers, directors or employees including, but not limited to, the plea of "guilty", "nolo contendere", "no contest", and "guilty to a lesser charge."

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

K. Attachment. The seizure of, attachment of, or levy on, Company's operating assets, including without limitation its equipment, maintenance or office facilities, or any part thereof.

L. Failure to Provide Assurance of Performance. Company's failure to provide reasonable assurance of performance as required under Section 10.5.

M. Commingling of Recyclables With Refuse/Landfilling of Recyclables. If Company empties Containers of properly set out Recyclable Materials into a Refuse load, or transports Recyclable Materials or Green Waste loads to a landfill or other location at which the material will not be diverted from landfilling (with the exception of Green Waste used as alternative daily cover, provided full diversion credit is received).

N. Failure to Meet 60% Diversion Goal. Company fails to divert at least 60% of all Solid Waste it Collects, per Section 3.6 for two consecutive calendar years.

Company will have 48 hours from the time it is notified by City to cure any default arising under paragraphs C, E, F, G, H, K and L above; provided, however, that City will not be obligated to provide Company with notice and an opportunity to cure if Company has committed the same or a similar breach within a 24-month period. Company is not entitled to receive notice of default, or an opportunity to cure a default, with respect to those matters listed above in paragraphs A, B, D, I, J, M, and N.

10.2 Right to Terminate Upon Default

If Company commits a material breach with regard to any of the matters listed above in paragraphs A through M of Section 10.1 (and, if permitted to cure, does not cure the breach within 48 hours), City will be entitled to unilaterally terminate this Agreement or to impose other sanctions, including financial sanctions, temporary suspensions, or any other conditions City deems appropriate short of termination. If City decides to terminate this Agreement upon a default by Company, City will have the right to do so upon giving 10 days' notice to Company, and City will not be required to take any further action, such as holding a public hearing or bringing suit.

City's right to terminate this Agreement and to take possession of Company's Facility are not exclusive, and City's termination of this Agreement will not constitute an election of remedies. Instead, these remedies are in addition to all other legal and equitable rights and remedies that City has.

In view of the nature of this Agreement, the need for timely, continuous, and high-quality service, the time required to effect alternative service, and the rights granted by City to Company, the remedy of monetary damages for a breach by Company is inadequate, and

City is entitled to seek injunctive relief and specific performance relating to any breach of this Agreement.

10.3 Liquidated Damages

A. General. The parties agree that, as of the date of execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages that would be incurred by City as a result of a breach by Company of its obligations. 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) 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 that 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 that make the public whole for past breaches.

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The parties acknowledge that consistent, reliable Solid Waste Collection service is of utmost importance to City and that City has relied on Company's representations about its quality of service commitment in awarding the Franchise to it. The parties further acknowledge that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. It is further acknowledged that if Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages, and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of those damages. Therefore, without prejudice to City's right to treat Company's non-performance as an event of default under this article, the parties agree that the following liquidated damage amounts represent a reasonable estimate, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums specified to the range of harm to City that reasonably could be anticipated and the expectation that proof of actual damages would be costly or impractical. In placing their initials in the blanks provided, each party

confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and to obtain an explanation of these liquidated damage provisions prior to execution of this Agreement.

Company City

Initial Here _____ _____ Initial Here_____

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

1. **Collection Reliability**

a) For each failure to commence service to a new Customer account within seven days after notice of order is provided to Company by City, which exceeds five such failures annually: $150.00

b) For each failure to deliver Containers on the day scheduled for delivery, which exceeds five such failures annually (for Rolloff Box and Temporary Service, see 2.f below): $ 50.00

c) For each failure to Collect Solid Waste, which has been properly set out for Collection, from an established Customer account or accounts, on the scheduled Collection day and not Collected by 5:00 P.M. the following day, and for each additional day in which the Collection is not made up, which exceeds 10 such failures annually: $150.00/day

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

2. **Collection Quality**

a) For each occurrence of damage to private property, which exceeds five such occurrences annually: $250.00

b) For each failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments, which exceeds 10 such failures annually: $150.00

c) For each failure to clean up Solid Waste spilled from Solid Waste Containers within 90 minutes, which exceeds 10 such failures annually:$150.00

d) For each occurrence of Collecting Solid Waste during unauthorized hours, which exceeds five such occurrences annually: $250.00

e) For each failure to clean or replace Containers in accordance with Section 3.5.5 of this Agreement, which exceeds 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

g) For each occurrence, in excess of one per month, of disturbing the public peace or creating a public nuisance as prohibited by Section 3.7.5 (J) of this Agreement: $100.00

3. **Customer Responsiveness**

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

b) For each failure to process Customer complaints to City as required by Article 4: $250.00

c) For each failure to notify City within one hour from the time Company has remedied a complaint forwarded by City: $10.00

d) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within three days of request from City or Customers: $150.00

e) For each failure to process a claim for damages within 30 days from the date submitted to Company: $100.00

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

4. **Diversion Program**

For each ton below the minimum number of tons required to be diverted to reach 60% diversion for all tonnage Collected under this Agreement, as measured each calendar year (and for April 1, 2012 to December 31, 2012) (see Section 3.6): $25.00 /ton

5. **Timeliness of Submissions to City**

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

a) Monthly or Quarterly Reports: $100 per day

b) Annual Reports: $350 per day

6. **Compliance with Computer Compatibility**

For each day after April 1, 2012 that Company is not in compliance with Section 4.2.6, Computer Compatibility: $100 per day

7. **Cooperation with Service Provider Transition**

a) For each day routing information requested by City in accordance with Section 11.10 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 and/or Recyclable Materials Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 11.10: $1,000/day

c) For delay in not meeting the requirements contained in Sections 3.12 and 11.8 in a timely manner, in addition to the daily liquidated damages for breach under 7(a) and 7(b) above, liquidated damages of: $10,000

8. Retention of Records

For failure to retain records in accordance with Section 7.2, including failure to retain for five years after the term of the Agreement and failure to notify City 90 days before destroying records:

$25,000 or actual damages, whichever is higher

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

Prior to assessing liquidated damages, City must give Company notice of its intention to do so. The notice will include a brief description of the event of non-performance. Company may review (and make copies at its own expense) all non-confidential information in City's possession relating to the event of non-performance. Company may, within 10 days after receiving the notice, request a meeting with the City Manager. Company may present evidence in writing and through testimony of its employees and others relevant to the event of non-performance. The City Manager will provide Company with a written explanation of the determination on each event of non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager will be final.

C. Amount. City may assess liquidated damages for each calendar day or each event, as appropriate, concerning which Company is determined to be liable.

D. Timing of Payment. Company must pay any liquidated damages imposed by City within 10 days after they are assessed. If assessed damages are not paid within the 10-day period, City may withhold any amount due from the next monthly payment to Company, proceed against the performance bond required by this Agreement, 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.

10.4 Excuse from Performance

A. The parties will be excused from performing their respective obligations under this Agreement if that performance is prevented by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including

judicial action), and other catastrophic events that are beyond the control of and not the fault of the party claiming excuse from performance, provided that Company shall use all possible efforts to provide service during and after the event. If full service is not feasible, Company must provide service to Customers, or for waste streams, considered most urgent based on health and safety issues to the full extent possible. Company shall provide alternative means of Disposal, such as drop-off sites, to the extent possible when regular Collection service is interrupted.

B. Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by Company's employees or directed at Company is an excuse from performance only to the extent that the following requirements are adhered to:

i. Company must provide a contingency plan to City prior to the start of services under 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 until it meets City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to City's satisfaction.

ii. Company must notify City: 1) thirty days before the expiration of the labor agreement under which drivers servicing City are covered; 2) immediately upon receiving any indication that labor unrest may occur; and 3) of the daily status of events during a strike.

iii. Company must provide all notifications and meet all requirements of this contingency plan or City shall have the option to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, 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.

C. The party claiming excuse from performance must, within two days after that party has notice of such cause, give the other party notice of the facts constituting such cause and assert its claim to excuse under this section.

D. The interruption or discontinuance of Company's services caused by one or more of the events listed above, provided all other Agreement requirements are met, will

not constitute a default by Company. Notwithstanding the foregoing, however, if Company is excused from performing its obligations for a period of ninety days if Company is following the contingency plan for labor unrest, or for any of the other causes listed in this section for a period of thirty (30) days or more, City will nevertheless have the right, in its sole discretion, to terminate this Agreement by giving 10 days' notice, in which case the provisions in Article 9 relative to taking possession of Company's land, equipment and other property, and engaging Company's personnel, will apply.

10.5 Assurance of Performance

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

ARTICLE 11

OTHER AGREEMENTS OF THE PARTIES

11.1 Relationship of Parties

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

11.2 Compliance with Law

In providing the required services, Company must at all times, at its sole cost, comply with all applicable laws and regulations promulgated by federal, state, regional, or local administrative and regulatory agencies that are now in force and as they may be enacted or amended during the term of this Agreement.

11.3 Governing Law

This Agreement is governed by, and will be 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 will 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 Resolution of Disputes.

A. Disputes regarding the interpretation or application of any provisions of this Agreement will, to the extent reasonably feasible, be resolved through good faith negotiations between the parties. With the mutual consent of the parties, an arbitrator or a mediator may be engaged to conduct or to facilitate these negotiations and the resolution of disputes.

B. If any action at law or in equity is brought to enforce or interpret any provisions of this Agreement, the prevailing party in that action will be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded.

11.6 Assignment

A. Except as provided in Article 9 (City's Right to Perform Service), neither party may 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 is void, and the attempted assignment will constitute a material breach of this Agreement.

B. For purposes of this section when used in reference to Company, "assignment" includes, but is not limited to (1) a sale, exchange, or other transfer to a third party of substantially all of Company's assets dedicated to service under this Agreement; (2) a sale, exchange, or other transfer of outstanding common stock of Company to a third party, provided such sale, exchange, or transfer may result in a change of control of Company; (3) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction that results in a change of ownership or control of Company; (4) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Company's property, or transfer occurring in the event of a probate proceeding; and (5) any combination of the foregoing (whether or not in related or contemporaneous transactions) that has the effect of a transfer or change of ownership or control of Company.

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

D. If Company requests City's consideration of and consent to an assignment, City may deny or approve that request in its sole discretion. No request by Company for consent to an assignment need be considered by City unless and until Company has met the following requirements:

(1) Company shall pay City its reasonable expenses for attorney'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 of fifty thousand dollars ($50,000) towards expenses shall be paid to City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of this deposit amount, regardless of whether City consents to the assignment. Company must also pay a transfer fee to City equal to 1% of the annual revenue for the most recent 12 months prior to the effective date of the proposed change of ownership, multiplied by the number of remaining years, or fraction thereof.

(2) Company must furnish City with audited financial statements covering the proposed assignee's operations for the immediately preceding three operating years.

(3) Company must furnish City with satisfactory proof: (a) that the proposed assignee has at least 10 years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Company under this Agreement; (b) that in the last five years the proposed assignee has not received any significant citations from any federal, state, or local agency having jurisdiction over its Solid Waste management operations due to any material failure to comply with state,

federal or local Environmental Laws and that the assignee has provided City with a complete list of such citations; (c) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (d) that the proposed assignee conducts its Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of Solid Waste, including the handling of Hazardous Substances; and (e) any other information required by City to ensure that the proposed assignee can fulfill the terms of this Agreement in a timely, safe, and effective manner.

(4) Under no circumstances will City be obligated to consider any proposed assignment if Company is in default at any time during the period of consideration.

11.7 Affiliated Companies

A. Company represents to City that its accounting records will be maintained on a basis that shows the results of Company's operations under this Agreement separately from operations in other geographic locations, as if Company were an independent entity providing service only to City. The costs and revenues associated with providing service to City will not be combined, consolidated, or in any other way incorporated with those of other operations conducted by Company in other geographic locations, or with those operations of an Affiliate.

B. If Company enters into any financial transactions with a related entity for the provision of labor, equipment, supplies, services, capital, etc., related to the furnishing of service under this Agreement, that relationship must be disclosed to City, and in the financial reports submitted to City. In such event, City's rights to inspect records, and to obtain financial data, will extend to that related entity.

11.8 Contracting or Subcontracting

Company must not engage any subcontractors for the Collection, transfer, processing, Recycling, or Disposal of Solid Waste without the prior written consent of City. Transport from the transfer station to processing or Disposal Facilities is excluded from this prohibition.

11.9 Binding on Assigns

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

11.10 Cooperation in Preparation for Termination or Expiration of Contract

If the transition of services to another entity occurs by reason of the expiration of the term, default, termination, or otherwise, Company will cooperate with City and any subsequent Solid Waste enterprise to assist in an orderly transition that will include, but not be limited to, Company providing route lists, Billing and service-level information, and other operating records needed to service all properties covered by this Agreement. Company's failure to cooperate with City following termination will be conclusively presumed to be grounds for specific performance and any 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.

11.11 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 authorized representatives, successors, and assigns.

11.12 Waiver

The waiver by either party of any breach or violation of any provisions of this Agreement will 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 will 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.

11.13 Company's Investigation

Company has made an independent investigation, satisfactory to it, of the conditions and circumstances relating to this the Agreement and the work to be performed.

11.14 Condemnation

City reserves its rights to acquire Company's property used in the performance of this Agreement by purchase or through the exercise of the right of eminent domain. This provision is in addition to, and is not intended to alter, the rights of the parties set forth in Article 9.

11.15 Notice

A. The representations of the parties who are primarily responsible for the administration of this Agreement and to whom notices, requests, demands, and other communications must be given, are as follows:

If to City: City Manager
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210-3713

Copy to: Director of Public Works and Transportation
Department of Public Works and Transportation
City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210

And to: City Attorney
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210

If to Company: General Manager
Crown Disposal Co., Inc.
P.O. Box 1081
Sun Valley, CA 91353

B. Notices, requests, demands, and other communications to be given by either party must be in writing and may be effected by personal delivery, by overnight courier, by facsimile transmission, by first class mail, or by certified mail, return receipt requested.

C. Notices, requests, demands, and other communications delivered or transmitted under paragraph (B) above will be deemed to have been duly received on the date of receipt by the recipient thereof if received prior to 5:00 p.m. on a Business Day. Otherwise, any such notice, request, demand, or communication will be deemed not to have been received until the next succeeding Business Day; provided, however, that notices given by first class mail will be deemed to have been received five Business Days after having been posted in the regular mail.

D. If the name of the principal representative or other recipients designated to receive the notices, requests, demands, and other communications, or the address or facsimile number of those persons, is changed, written notice must be given at least five working days before the effective date of that change. Notices given before actual receipt of a notice of change will not be invalidated by the change.

11.16 Representatives of the Parties

A. References in this Agreement to the "City" mean the City Council, and all actions to be taken by City must be taken by the City Council except as provided below. The administration of this Agreement by City will be under the supervision and direction of City's Department of Public Works and Transportation. The City Council has initially delegated authority to the Director of Public Works and Transportation designee to take all actions specified in this Agreement, unless otherwise stated. At any time in the future, the City Council may delegate, in writing, authority to other City employees, and may authorize those employees, in turn, to delegate in writing to subordinate employees some or all of that authority. Company may rely upon actions taken by those delegates if they are within the scope of the authority properly delegated to them.

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

11.17 City Free to Negotiate with Third Parties

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

11.18 Compliance with Municipal Code

Company must comply with all applicable provisions of the City's Municipal Code and with all amendments to those provisions during the term of this Agreement.

11.19 Privacy

Company must strictly observe and protect the rights of privacy of Customers. Information identifying individual Customers, or the contents of a Customer's waste stream, must not be revealed to any Person, governmental unit, or private entity, unless directed by a court of law, by statute, or upon authorization of the Customer. This provision will not be construed to preclude Company from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by the Act. This provision does not apply to reports or records provided to City under this Agreement so long as City maintains reports or records with Customer identification as confidential information in accordance with this section.

11.20 Compliance with Immigration Laws.

In the performance of this Agreement, Company will comply with all applicable immigration laws.

11.21 Proprietary Information, Public Records

City acknowledges that certain records and reports of Company are proprietary and confidential. Company is obligated to permit City to inspect its records on demand and to provide copies to City when requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Company. Notwithstanding the foregoing, and notwithstanding Section 11.19 (as it applies to City), any documents provided by Company to City that are public records may be disclosed in accordance with a proper public records request.

11.22 Guarantee of Company's Performance

Under a guarantee in substantially the form attached as Exhibit 3, Community Recycling & Resource Recovery, Inc., a California corporation, has agreed to guarantee Company's performance of this Agreement. The guarantee will be provided concurrently with Company's execution of this Agreement.

11.23 Attorneys' Fees

In any action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party is entitled to an award to attorneys' fees in the amount reasonably incurred in the prosecution or defense of that action. The term "prevailing party" means 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 PROVISIONS

12.1 Entire Agreement

This Agreement, including the exhibits, constitutes the entire agreement between the parties with respect to the matters covered. No verbal agreement or understanding with any officer, agent, or employee of City, either before, during, or after the execution of this Agreement, will affect or modify any of the obligations herein contained, nor will any such verbal agreement or understanding entitle Company to any additional payment under the terms of this Agreement.

12.2 Section Headings

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

12.3 References to Laws and Other Agreements

All references in this Agreement to laws will be understood to include existing laws as they may be subsequently amended or recodified, unless otherwise specifically provided. This Agreement supersedes all agreements previously entered into by the parties.

12.4 Conflicts

If there is any conflict between the provisions of this Agreement and the provisions of the City's Municipal Code, the provisions of this Agreement will control.

12.5 Interpretation

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

12.6 Amendment to Agreement

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

12.7 Severability

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

12.8 Exhibits

Each of the exhibits identified in this Agreement is attached and is incorporated by this reference.

12.9 Non-Waiver Provision

Failure of either party to exercise any of the remedies set forth in this Agreement within the time periods specified will not constitute a waiver of any rights of that party with regard to an event of nonperformance, whether determined to be a breach, excused performance, or unexcused default by the other party.

12.10 Rights Reserved to City.

A. In addition to all rights specifically reserved to City by this Agreement, City reserves every other right and power required to be reserved under the City's Municipal Code, and all other applicable laws or regulations, and Company, by its acceptance of this Agreement, agrees to comply with any action or requirement of City in its exercise of any such right or power.

B. City has the right to waive any provisions of this Agreement relating to Company's obligations, except those required by federal or state laws or regulations, if City determines (1) that it is in the public interest to do so; or (2) that the enforcement of such provision will impose an undue hardship on Company or its Customers. To be effective, such waiver must be in writing and signed by a duly authorized representative of City.

C. City has the right to intervene in any suit or proceeding concerning this Agreement to which Company is a party, and Company will not oppose such intervention by City.

12.11 Reasonable Determinations

Where any provision of this Agreement requires the consent or approval of either party, such consent or approval will not be unreasonably or arbitrarily withheld.

12.12 Conflict of Interest

The parties agree that, to their knowledge, no member of the City Council, nor any other officer or employee of City, has any interest in this Agreement or the Solid Waste Franchise, whether contractual, financial or otherwise, which has not been disclosed as required by applicable law. In addition, if any contractual, financial, or other interest within the purview of applicable law comes to the knowledge of either party at any time, a full and complete disclosure of that information will be made in writing to the other party, even if that interest would not be considered a prohibited conflict of interest under applicable law.

12.13 Counterpart Execution

This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument.

12.14 Authority and Effective Date

A. Authority. The parties signing below represent and warrant that they have the requisite authority to bind the entities on whose behalf they are signing.

B. Effective Date. This Agreement will become effective on the date this Agreement is approved by the Beverly Hills City Council, or on the date specified by the City Council in its order or action approving this Agreement, whichever last occurs (the "Effective Date"). It is the intention of the parties that Company will first execute this Agreement and then submit it to City. The City Clerk will insert the effective date in all counterparts of this Agreement, attest to their execution by a duly authorized officer of City, and transmit one or more fully executed counterparts to Company.

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its authorized representative as of the date set forth below the authorized signature.

CITY:

CITY OF BEVERLY HILLS
a municipal corporation

By: _____
JIMMY DELSHAD, Mayor of the
City of Beverly Hills, California

Date: 12/21/2010

ATTEST:

_____ (seal)
BYRON POPE, City Clerk

COMPANY:

By: _____
Name: THOMAS H. FRY
Title: President

Date: 12-15-10

By: _____
Name: JOHN RICHARDSON
Title: Vice President and Secretary

Date: 12-15-10

APPROVED AS TO FORM:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT

_____
JEFFREY KOLIN
City Manager

_____
for DAVID GUSTAVSON
Director of Public Works and Transportation

KARL KIRKMAN
Risk Manager

EXHIBIT 1

INITIAL MAXIMUM CONTRACTOR RATES

(April 1, 2012 – June 30, 2012)

Bin Rates

Container Size	Number of pickups per week						
	1	2	3	4	5	6	7
1.5-yard	$56.86	$94.29	$129.65	$164.31	$196.22	$228.81	$308.53
2-yard	$63.10	$104.00	$142.84	$180.95	$217.71	$253.06	$340.43
3-yard	$69.34	$114.40	$157.39	$198.30	$238.51	$277.34	$373.71
4-yard	$80.43	$131.74	$181.66	$230.89	$277.34	$321.71	$434.03
3-yard w/ compactor	$127.58	$209.39	$289.82	$366.08	$439.58	$510.29	$689.18
Recycling bin/cart	No charge						

Restaurant Bin Rates

Container Size	Number of pickups per week						
	1	2	3	4	5	6	7
1.5-yard	$85.28	$120.65	$160.86	$214.49	$255.15	$295.37	$428.48
2-yard	$92.92	$134.51	$175.41	$221.87	$262.09	$308.53	$441.66
3-yard	$107.47	$155.31	$203.15	$242.68	$296.06	$334.88	$469.39
4-yard	$120.65	$189.98	$229.49	$290.51	$350.83	$403.52	$536.64
3-yard w/ compactor	$209.39	$312.00	$412.54	$501.28	$619.15	$709.98	$1,006.03
Recycling bin/cart	No charge						

Scout Service Rates (additional charge per container)

	Number of pickups per week						
	1	2	3	4	5	6	7
Charge Per Container	$28.22	$45.15	$62.09	$79.01	$95.59	$112.88	$129.81

EXHIBIT 1 (continued)

INITIAL MAXIMUM CONTRACTOR RATES

(April 1, 2012 – June 30, 2012)

Rolloff Service

Service Type	Rate
Pull Charge (per pull)	
• Standard Rolloff Box	$142.22
• Compactor Rolloff Box	$187.37
Dump/Processing Charge (per ton)	
• Dump Fee per ton (refuse transfer and disposal w/o processing)	$34.43
• Commingled Recyclables Processing Fee per ton (excluding material revenues credited to City)	$17.36
• Mixed Waste Processing Fee per ton, including residue disposal	$34.43
• Inert Materials (asphalt, concrete, dirt, etc.)	$21.42
• Wood Waste	$28.00
• Green Waste	$33.50
10-Yard Concrete Wash-Out Bin (low-boy pumping fee)	$280.00
95% C&D Roll-Off Box Diversion - Additional Fee for 95% diversion of construction and demolition debris roll-off box loads	Extra $20/load
Rolloff box dry run fee (after 30 minutes)	$100
Rolloff box cleanings above once per year (includes compactors)	$100
After-Hours Surcharge – Monday through Saturday after 5:00 pm, all day Sunday – Customer requests delivery and/or pull *	$100

* After-hour surcharge does not apply to morning deliveries or pulls. If both delivery and pull are requested after hours, only one after-hours surcharge applies.

EXHIBIT 1 (continued)

INITIAL MAXIMUM CONTRACTOR RATES

(April 1, 2012 – June 30, 2012)

Other Services

Service	Rate
Temporary Bins - Per Pickup, disposal included:	
• 3 Cubic Yard Bin, per pull	$90.30
• 6 Cubic Yard Bin, per pull	N/A
Temporary Bin Dry Run Fee (after 30 minutes)	$50.00
Bin cleanings above once per year	$50.00
Commercial Bulky Item Pickup Per Item:	
• First Item On Each Service Call	$33.87 per item
• Each Additional Item Per Same Service Call	$16.94 per item
Hasp and Lock Services	$6.78 per month, per bin (not based on service frequency)
Extra Empty Charge	$39.51 per bin per pickup
Emergency Collection and Disposal	$84.67 per hour, for one collection vehicle and one crew

EXHIBIT 2

RATE ADJUSTMENT FORMULA

EXHIBIT 2A

BIN RATE ADJUSTMENT (Example Calculation)

Step One: Calculate percentage change in indices

Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/ Column A)-1)	D Percent of Index Change Allowed For Rate Adjustment	E Percent Change for Rate Adjustment (Column C x Column D)
Labor	(1)	107.3	109.2	1.8%	100%	1.8%
Fuel	(2)	344.0	160.0	-53.5%	100%	-53.5%
Equipment	(3)	118.9	124.4	4.6%	100%	4.6%
Disposal	(4)	$ 33.00	$ 38.00	15.2%	100%	15.2%
All Other	(4)	215.572	219.235	1.7%	50%	0.9%

Step Two: Calculate weighted percentage change to rates

Adjustment Factor	F Percent Change for Rate Adjustment (From Column E)	G Weighting	H Weighted Percent Change (Column F x Column G)
Labor	1.8%	22%	0.4%
Fuel	-53.5%	5%	-2.7%
Equipment	4.6%	15%	0.7%
Disposal	15.2%	33%	5.0%
All Other	0.9%	25%	0.2%
Total	n/a	100%	3.6%

Step Three: Apply percentage change to rates, up to 5%

Rate Category	I Current Monthly Customer Rate	J Total Weighted Percentage Change (from Column H or 5%, whichever is lower)	K Rate Increase or Decrease (Column I x Column J)	L Adjusted Monthly Rate (Column I + Column K)
3-yd bin, 1x week	$ 68.25	3.6%	$ 2.46	$ 70.71
3-yd bin, 2x week	$ 112.61	3.6%	$ 4.05	$ 116.66
3-yd bin, 3x week	$ 154.93	3.6%	$ 5.58	$ 160.51
3-yd bin, 4x week	$ 195.20	3.6%	$ 7.03	$ 202.23
3-yd bin, 5x week	$ 234.78	3.6%	$ 8.45	$ 243.23
3-yd bin, 6x week	$ 273.00	3.6%	$ 9.83	$ 282.83
3-yd bin, 7x week	$ 367.87	3.6%	$ 13.24	$ 381.11

Step Four: Calculate new weightings for future rate adjustments

Adjustment Factor	M Old Index Weighting (From Column E)	N Percent Change in Index for Rate Adjustment (from Column E)	O Adjusted by Change (Column M x (1+Column N))	P New Index Weighting (Column O Row/ Column O Total)
Labor	22%	1.8%	22.4%	21.6%
Fuel	5%	-53.5%	2.3%	2.2%
Equipment	15%	4.6%	15.7%	15.2%
Disposal	33%	15.2%	38.0%	36.7%
All Other	25%	0.9%	25.2%	24.3%
Total	100%		103.6%	100%

(1) Employment Cost Index CIU 2010005200000I, Total Compensation, Private Industry, Index number, Transportation and material moving*
(2) Producer Price Index WPU 0531, Fuels and related products and power, natural gas*
(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing*
(4) Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average*

* See Exhibit 2C

EXHIBIT 2B

ROLLOFF BOX RATE ADJUSTMENT (Example Calculation)

Step One: Calculate percentage change in indices

Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/ Column A) - 1)	D Percent of Index Change Allowed for Rate Adjustment	E Percent Change for Rate Adjustment (Column C x Column D)
Service Component (pull rate)						
Labor	(1)	107.3	109.2	1.8%	100%	1.8%
Fuel	(2)	344.0	160.0	-53.5%	100%	-53.5%
Equipment	(3)	118.9	124.4	4.6%	100%	4.6%
All Other	(4)	215.572	219.235	1.7%	50%	0.9%
Disposal Component	(4)	$ 33.00	$ 38.00	15.2%	100%	15.2%

Step Two: Calculate weighted percentage change to rates

Adjustment Factor	F Percent Change for Rate Adjustment (From Column E)	G Weighting	H Weighted Percent Change (Column F x Column G)
Service Component			
Labor	1.8%	33%	0.6%
Fuel	-53.5%	8%	-4.3%
Equipment	4.6%	22%	1.0%
All Other	1.7%	37%	0.6%
Total Service Component (Pull Rate)	n/a	100%	-2.1%
Disposal Component (per ton gate rate)	15.2%	100%	15.2%

Step Three: Apply percentage change to rates, up to 5%

Rate Category	I Current Monthly Customer Rate	J Total Weighted Percentage Change (from Column H or 5%, whichever is lower)	K Rate Increase or Decrease (Column I x Column J)	L Adjusted Monthly Rate (Column I + Column K)
Service Component (Pull Rate)	$ 142.22	-2.1%	$ (2.99)	$ 139.23
Disposal Component (per ton gate rate for mixed waste processing)	$ 34.43	15.2%	$ 5.23	$ 39.66

Step Four: Calculate new weightings for future rate adjustments

Adjustment Factor	M Old Index Weighting (From Column G)	N Percent Change in Index for Rate Adjustment (from Column E)	O Adjusted by Change (Column M x (1+Column N))	P New Index Weighting (Column O Row/ Column O Total)
Labor	33%	1.8%	33.6%	34.4%
Fuel	8%	-53.5%	3.7%	3.8%
Equipment	22%	4.6%	23.0%	23.6%
All Other	37%	0.9%	37.3%	38.2%
Total	100%		97.6%	100%

(1) Employment Cost Index CIU 2010005200000I, Total Compensation, Private Industry, Index number, Transportation and material moving*
(2) Producer Price Index WPU 0531, Fuels and related products and power, natural gas*
(3) Producer Price Index, PCU336120336120, Heavy duty truck manufacturing*
(4) Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average*

* See Exhibit 2C.

EXHIBIT 2C

EXAMPLE CALCULATION FOR

AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES

Rate adjustment indices for labor, fuel, equipment 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 average annual index is an average of the calendar year's monthly or quarterly 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 "all other" cost component 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 3

CORPORATE GUARANTY

Guaranty

THIS GUARANTY ("Guaranty) is given as of the ____ day of ____, 2010, and is made with reference to the following facts and circumstances:

A. Crown Disposal Co., Inc., ("Owner") is a corporation organized under the laws of the State of California. Community Recycling & Resource Recovery, Inc., ("Guarantor") is a corporation organized under the laws of the State of California.

B. Owner and the City of Beverly Hills ("City") have negotiated a Franchise Agreement for Commercial Solid Waste Collection Services dated as of _____, ("Agreement"). A copy of this Agreement is attached.

C. It is a requirement of the Agreement, and a condition to City entering into the Agreement, that Guarantor guarantee Owner's performance of the Agreement.

D. Guarantor is providing this Guaranty to induce City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

1. **Guaranty of the Agreement.** Guarantor irrevocably and unconditionally guarantees to City the complete and timely performance by Owner of each and every term of the Agreement that Owner is required to perform. If Owner fails to perform any term of the Agreement, Guarantor will promptly and fully perform it in the place of the Owner, or cause it to be performed. Guarantor also guarantees payment to City of any damages, costs, or expenses that might become recoverable by City from Owner due to its breach of the Agreement.

2. **Guarantor's Obligations Are Absolute**. The obligations of the Guarantor under this Guaranty are continuing, unconditional, and unlimited, and, with respect to any payment obligation of Owner under the Agreement, constitute a guarantee of payment and not of collection, and are not conditional upon the validity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations under this Guaranty, the Guarantor will 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**. Guarantor has no right to terminate this Guaranty, or to be released, relieved, exonerated or discharged from its obligations under this Guaranty for any reason, including, without limitation: (a) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (b) 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; (c) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder, or the impairment or suspension of any of City's rights or remedies against the Owner; or (d) any merger or consolidation of the Owner with any other entity, or any sale, lease, or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor waives the rights and benefits under California Civil Code Section 2819.

The Guarantor waives all benefits and defenses under California Civil Code Sections 2846, 2849, and 2850, including without limitation, the right to require City to (a) proceed against Owner; (b) proceed against or exhaust any security or collateral City may now or later hold; or (c) pursue any other right or remedy for Guarantor's benefit. Guarantor agrees that 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 City may now or later hold. City may, in its sole discretion, exercise all rights and remedies available to it against Owner, or any other guarantor or pledgor, without impairing City's rights and remedies in enforcing this Guaranty.

The Guarantor now waives, and agrees to waive at any future time, at the request of City to the extent now or then permitted by applicable law, all rights that the Guarantor may have, or which at any later time may be conferred upon it, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following will not affect the liability of the Guarantor: (a) at any time or from time to time, without notice to the Guarantor, performance or compliance with the Agreement is waived; (b) any indemnification with respect to Owner's obligations under the Agreement, or any security therefore, is released or exchanged in whole or in part; or (c) any assignment of the Agreement is effected that does not require City's approval.

The Guarantor 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 under this Guaranty are paid or performed, Guarantor's obligations will 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 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 will continue in full force and effect until all of the terms of the Agreement have been fully performed or otherwise discharged. Guarantor will remain fully responsible under this Guaranty without regard to the acceptance by City of any performance bond or other collateral to assure the performance of Owner's obligations under the Agreement. Guarantor will not be released from its obligations under this Guaranty so long as there is any claim by City against Owner arising out of the Agreement based on Owner's failure to perform, which failure has not been settled or discharged.

5. **No Waivers**. No delay by City in exercising any rights under this Guaranty, nor City's failure to exercise those rights, will operate as a waiver of those rights. No notice to or demand on Guarantor will be a waiver of any obligation of Guarantor, or right of City, to take other or further action without notice or demand. No modification or waiver of any provisions of this Guaranty will be effective unless it is in writing and signed by City and by Guarantor, nor will any waiver be effective except in the specific instance or matter for which it is given.

6. **Attorneys' Fees**. If Guarantor breaches its obligations under this Guaranty Guarantor will pay reasonable attorneys' fees, and all other reasonable costs and expenses that are incurred by City in enforcing this Guaranty, or that are incurred 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 under this Guaranty.

7. **Governing Law: Jurisdiction**. This Guaranty is and will be deemed to be a contract entered into under the laws of the State of California and will 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 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 those courts. Guarantor appoints the following person as its agent for service of process in California:

_____

_____

_____

_____

With a copy by certified mail to:

_____

_____

_____

_____

8. **Severability**. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will not affect the remaining portions of this Guaranty, which portions are severable and will continue in full force and effect.

9. **Binding On Successors**. This Guaranty inures to the benefit of City and its successors and shall be binding upon Guarantor and its successors, including any transferee of substantially all of Guarantor's assets, and its shareholders in the event of Guarantor's dissolution or insolvency.

10. **Authority**. Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that the execution of this Guaranty has been authorized by all necessary action under its articles 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 City: City Manager
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, CA 90210

with a copy to the City Attorney at the same address.

To the Guarantor: _____

_____

[NAME OF GUARANTOR]

By: _____
Authorized Representative

Title: President

Date: 12-15-10

By: _____
Authorized Representative

Title: Vice President

Date: 12-15-10

EXHIBIT 4

FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City of Beverly Hills, California, a municipal corporation ("City") has awarded to Crown Disposal Co., Inc., ("Principal"), an exclusive franchise for the collection, processing, and disposal of commercial solid waste generated within the City; and

WHEREAS, the exclusive franchise, identified as "Franchise Agreement for Commercial Solid Waste Collection Services" is incorporated by this reference; and

WHEREAS, the Principal is required under the terms of the exclusive franchise to furnish a bond for its faithful performance;

NOW, THEREFORE, we, Principal and _____, as Surety, are held and firmly bound unto City in the penal sum of Five Hundred Thousand Dollars ($500,000), lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation will become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, will in all things stand to, abide by, well and truly keep and perform the covenants, conditions, and provisions in said exclusive franchise and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and will indemnify and save harmless City, its officers, agents, and employees, as therein stipulated; otherwise, this obligation will be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified, costs and reasonable expenses and fees will be included, including reasonable attorneys' fees incurred by City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the exclusive franchise, the work to be performed thereunder, or the specifications accompanying the exclusive franchise will in any manner affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of

time, alteration, or addition to the terms of the exclusive franchise, the work, or the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the above-named Principal and Surety on _____, 2010.

Note: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment.

_____
(Type name of Principal)

_____

_____
(Type address of Principal)

By: _____
(Signature of authorized officer)

President
(Title of officer)

_____
(Type name of Surety)

_____

_____
(Type address of Surety)

By: _____
(Signature of authorized officer)

Vice President
(Title of officer)

APPROVED AS TO FORM:

_____
CITY ATTORNEY

EXHIBIT 5

NOTARY CERTIFICATION

STATE OF CALIFORNIA)

COUNTY OF LOS ANGELES } SS:

On DEC. 15, 2010 before me, the undersigned, a Notary Public in and for the State of California, personally appeared THOMAS H. FRY AND JOHN RICHARDSON, known to me to be the OFFICERS of the Company that executed the within instrument on behalf of the Company therein named, and acknowledged to me that the Company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of LOS ANGELES this 15TH day of DEC., 2010

Notary Public

My Commission Expires:

JUNE 28, 2011

J. B. WARREN
Commission # 1748283
Notary Public - California
Los Angeles County
My Comm. Expires Jun 28, 2011

EXHIBIT 6

RESIDENTIAL SOLID WASTE

PROCESSING AND DISPOSAL AGREEMENT

Crown Disposal Co., Inc. (Crown) warrants that it has made arrangements with Community Recycling and Resource Recovery, Inc. ("CRRR") to reserve capacity for and accept all solid waste generated by the City of Beverly Hills' (City's) residential customers at prices listed below throughout the term, including extensions, of the Franchise Agreement between the City of Beverly Hills and Crown Disposal Co. Inc. for Commercial Solid Waste Collection Services (Commercial Agreement). City will deliver the majority of the residential solid waste it collects to the Processing Facility. City may also deliver Inert materials generated from City projects for processing at CRRR. Processing Facility must accept waste delivered from City Monday through Saturday, observing only New Year's Day, Thanksgiving Day and Christmas Day as holidays. City can terminate this processing agreement upon 90-days' written notice to Company.

Mixed residential refuse and recyclables processing (without separate commingled Recycling Cart program)

Effective July 1, 2011, CRRR will accept any and all mixed residential refuse and recyclables from this program at a gate rate of $43.69 per ton. CRRR will process all mixed Solid Waste to maximize recovery of Recyclables commodities, and dispose of residual waste. The guaranteed minimum recovery rate from this processing is 35% of the waste processed.

Residential Green Waste processing

- CRRR will accept any and all of City's residential Green Waste at a gate rate of $33.55 per ton and divert Green Waste from landfill disposal.

Inerts Diversion

CRRR will accept any and all Inerts collected by City crews from water, streets and other public works projects at a gate rate of $21.42 per ton, and will divert 100% of Inerts from landfilling.

Rate Adjustments

Rate adjustments are effective as of July 1, with the first permissible rate adjustment on July 1, 2012. Requests for rate adjustments must be received by City no later than 60 days prior to July 1; otherwise that year's opportunity to request an adjustment will be considered waived. The method for determining the amount of the rate adjustments depends upon the waste stream. Methods are listed below:

Mixed Waste Processing – City will consider a rate adjustment to the per ton processing rate for the mixed residential and recyclables waste stream. The requested rate increase shall be no more than:

a) At least 35% of the average annual change in the Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average for the calendar year ended the December prior to the rate adjustment over the year ended the prior December. If the diversion rate for recovered materials exceeds 35% in any calendar year, the percentage used for the subsequent rate adjustment shall be equal to the percentage recovery rate for the Recyclables recovered by mixed waste processing. This recovery percentage shall be determined based upon Company's monthly reports to City, as reviewed and adjusted by City, and additional supporting tonnage data that may be requested by City from Company.

plus

b) 100% minus the percentage used in "a" above, no more than 65%, of the change in the per ton gate rate at the actual landfill used capped at the change in the gate rate at the Puente Hills Landfill (or Puente Hills MRF after landfill closure) for regular refuse. This change in the gate rate will be measured based upon the refuse gate rate in place as of the previous July 1 and any changes that have taken, or will take, effect through June 30 of that same year immediately prior to the day in which the new rate would take effect. No rate adjustment will be permitted for any rate adjustments taking effect July 2 or later until the following July 1.

Hypothetical example rate adjustment:

CPI Component

Change in average annual CPI from calendar year ended December 2010 to Calendar year ended December 2011	2.00%
35% of CPI change (to be based upon actual recovery rate, no less than 35%)	0.7%
Processing Facility gate rate as of July 1, 2011	$43.69
Current gate rate multiplied by one-third of change in CPI ($43.69 x .007)	$0.31/ton

Landfill Component

Landfill gate rate as of July 1, 2012	$40.00/ton
Landfill refuse gate rate as of July 1, 2011	-$38.00/ton
Hypothetical Puente Hills rate adjustment	$2.00/ton

Total Adjustment

CPI component increase to Processing Facility (35% CPI increase)	$0.31/ton
Landfill component increase to Processing Facility (no more than 65% of $2.00/per ton)	$1.30/ton
New Processing Facility gate rate effective July 1, 2012	$45.30/ton

Green Waste and Inerts Processing – City will consider a rate adjustment to the per ton processing rate for Green Waste and for Inerts. The requested rate increase shall be no more than the change in the average annual Consumer Price Index for All Urban Consumers, all items index (CPI-U) – U.S. city average for the calendar year ended the December prior to the rate adjustment and the prior calendar year. See Exhibit 2C for an example calculation.

Term

This agreement will remain in effect for the duration of the term of the Commercial Agreement between Company and City, including contract extensions.

This disposal/processing capacity and rate guarantee is in addition to, and does not affect, the capacity guaranteed by Company for commercial waste (including multi-family Bin waste) generated in the City under the Commercial Agreement.

As Crown has warranted to City that it has secured the above agreement on behalf of City, failure of Crown to make these terms available to City will be considered a material breach by Crown of the Commercial Agreement, putting Crown in default and permitting City to terminate the Commercial Agreement.

Acknowledged By:

Thomas H. Fry, President
Crown Disposal Co., Inc.

John Richardson
Crown Disposal Co., Inc.