



DATE: October 20, 2010
TO: Honorable Mayor and City Councilmembers
FROM: Public Works Department
SUBJECT: **APPROVAL OF A SOLID WASTE SERVICES FRANCHISE AGREEMENT WITH WASTE MANAGEMENT OF CALIFORNIA, INC.**

SYNOPSIS

Staff recommends that the City Council approve a 13-year Solid Waste Franchise Agreement between the City and Waste Management of California, Inc., with a contract term beginning January 1, 2011, and terminating December 31, 2023; and authorize the City Manager to execute the agreement.

BACKGROUND

The City's current solid waste franchise agreement with Waste Management is set to expire in June 2012 with a two-year termination notice requirement. Per City Council direction, the City hired Sloan Vazquez Consulting to enter into exclusive negotiations with Waste Management to negotiate a new agreement on the City's behalf.

ANALYSIS

Sloan Vazquez and Waste Management have completed their negotiations for the new franchise agreement and are seeking City Council approval. The base terms and conditions are outlined below:

- Contract award fee of \$1 million, paid to the City upon execution of the new contract
- Annual franchise fee of \$1.7 million or 9 percent, whichever is greater
- Recycling revenue-sharing
- An all-new fleet of Compressed Natural Gas (CNG) service vehicles (42 new C.A.R.B. compliant trucks)
- Three-cart, fully automated residential service
- Reduced service fee for low-volume residents
- Enhanced commercial recycling program
- Enhanced community education program

- Enhanced HHW, e-Waste, and "sharps" collection, plus special household battery and cell-phone collection
- No increase in rates until July 1, 2012
- \$17,000,000 capital commitment for the new CNG vehicles, residential automated trucks, and the construction of a local CNG fueling station

A copy of the new solid waste franchise agreement is attached as Exhibit 1.

The negotiations have resulted in new services, with a goal of reducing waste, increasing recycling, and providing a significant franchise fee to the City. The new terms and conditions also eliminate the "benchmarking" process that is in the City's current franchise agreement. The current agreement requires that the City's rate for comparable services be set to within the third-lowest rate in the County. The negotiations have resulted in service and revenue increases to the City and provide a fair return to Waste Management. The "benchmarking" process is being eliminated and Waste Management will be eligible for rate adjustments at 100 percent of the National All-Cities CPI or 75 percent of the San Diego Area CPI, whichever is higher. The rate adjustment would be effective annually starting in July 2012.

Under the proposed terms and conditions, the primary trash and recycling programs will change.

The current recycling crates will be replaced with a single container that would accommodate all recyclable materials in one container.

The City's current unlimited trash collection service will be replaced with a choice of two solid waste carts: a 96-gallon cart for standard trash, and a 35-gallon cart for low-volume users. Once initiated, all residents would have to use one of the available carts for trash and would no longer be able to dispose of trash on an unlimited basis. Additional carts would be available for those residents who generate significant trash.

FISCAL IMPACT

The proposed terms and conditions would result in Waste Management of North County paying a franchise fee of \$1.7 million annually to the City's General Fund (1101.4166). The Contract Award Fee of \$1 million will be deposited in the General Fund (1101.4416). Similar to franchise fees from cable and utility companies, the Waste Management franchise fee can be allocated at the discretion of the City Council. There are several City programs impacted by solid waste-related issues. Those include the deferred street maintenance costs associated with trash trucks, right-of-way cleaning costs, storm drain cleaning costs and clean water programs. These programs are impacted by the solid waste program and would benefit from additional solid waste-related funding.

The Council does have the discretion, as an option, to allocate the additional revenue to the cost centers that are impacting the City's ongoing budget or that have been identified by the Council as priority issues:

	<u>Program</u>	<u>Annual Cost</u>
1.	Beach sand replenishment	\$150,000
2.	San Luis Rey River maintenance	\$350,000
3.	OPD/Library debt service	\$300,000
4.	Multiple Habitat Conservation Plan	\$500,000
5.	Ongoing employee benefit cost increases (PERS, health insurance)	\$900,000

A complete listing of the Council's 2008 identified priorities is attached as Exhibit 2. Since the franchise fees will be an annual revenue source, they will be included in the City's future budget process for Council consideration at that time.

COMMISSION OR COMMITTEE REPORT

The negotiated terms and conditions and franchise agreement have not been presented to the Integrated Waste Commission. The Integrated Waste Commission and individual commissioners, along with members of the public did have an opportunity to provide comments relative to the services that should be included in the new agreement. All comments received were forwarded to Sloan Vazquez for consideration.

INSURANCE REQUIREMENTS

The City's standard insurance requirements will be met.

CITY ATTORNEY ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

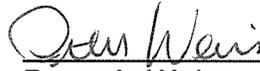
Staff recommends that the City Council approve a 13-year Solid Waste Franchise Agreement between the City and Waste Management of California, Inc., with a contract term beginning January 1, 2011, and terminating December 31, 2023; and authorize the City Manager to execute the agreement.

PREPARED BY:



Joseph Arranaga
Deputy Director Public Works

SUBMITTED BY:



Peter A. Weiss
City Manager

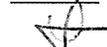
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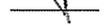
Michelle Skaggs Lawrence, Deputy City Manager



Don Hadley, Deputy City Manager

Teri Ferro, Financial Services Director





ATTACHMENTS

Exhibit 1: Solid Waste Franchise Agreement

Exhibit 2: Council priority list

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

FINAL DRAFT

**CONTRACT
FOR THE PROVISION OF
SOLID WASTE SERVICES**

**Executed Between the
City of Oceanside, CA and**

**Waste Management of California, Inc.
(Contractor)**

This _____ day of _____

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

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OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

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EXHIBIT 2 – RATE ADJUSTMENT EXAMPLE

EXHIBIT 3 – PERFORMANCE BOND

EXHIBIT 4 – CITY FACILITIES

EXHIBIT 5 – ACCEPTABLE AND UNACCEPTABLE BULKY ITEMS

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

This Solid Waste Services Contract ("Contract") made and entered into this _____ day of _____, 2010, by and between the **City of Oceanside**, hereinafter referred to as "City" and Waste Management of California, Inc., a California corporation, hereinafter referred to as "Contractor".

Now, therefore, in consideration of the mutual covenants, Contracts and consideration contained herein, the City and Contractor hereby agree as hereinafter set forth:

ARTICLE 1. DEFINITIONS

For the purpose of this Contract, the definitions contained in this Article shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender. The meaning of terms or words not defined herein shall be as commonly understood in the solid waste Collection Services industry when the common understanding is uncertain.

1.01 ACT

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

1.02 AFFILIATE

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Contract, shall apply.

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

1.03 ANNUAL DIVERSION REPORT

"Annual Diversion Report" means the annual report submitted by the Contractor to the City describing the previous year's diversion activities, diversion percentages and associated calculations and the description of the diversion activity planned for the upcoming year, if applicable. The Annual Diversion Report shall be prepared in a manner that directly corresponds to the reporting requirements of Cal Recycle and the Act, as amended.

1.04 BAGSTER® BAG

"Bagster® Bag" means a soft-sided polypropylene Container that can hold up to 3,300 pounds of Solid Waste, is purchased by the Customer at a local hardware or home supply store, and is collected by Contractor using a special vehicle with an overhead crane.

1.05 BAGSTER® SERVICE

"Bagster® Service" means a method for Customers to arrange for collection of solid waste as an alternative to temporary bin or roll-off service, using a Bagster® Bag. Contractor will provide for collection/processing of the Bagster® Bag.

1.06 BILLINGS

"Billings" or "Billing" or "Bill" means the statement(s) of charges provided to Customers for services rendered by City or Contractor, as the case may be.

1.07 BIN

"Bin" means a detachable metal or rigid plastic container with a capacity of less than ten (10) cubic yards, equipped with a lid, and designed for mechanical pick-up by collection vehicles.

1.08 BIN SERVICE

"Bin Service" means Solid Waste Services in which a Bin is used for the Collection of Solid Waste.

1.09 BIOHAZARDOUS OR BIOMEDICAL WASTE

"Biohazardous or Biomedical Waste" means any waste which may cause disease or reasonably be suspected of harboring pathogenic organisms; included are waste

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

resulting from the operation of medical clinics, hospitals, and other facilities processing wastes which may consist of, but are not limited to, human and animal parts, contaminated bandages, pathological specimens, hypodermic needles, sharps, contaminated clothing and surgical gloves.

1.10 BROWN GOODS

“Brown Goods” means electronic equipment such as stereos, televisions, computers, VCRs and other similar items.

1.11 BULKY WASTE

“Bulky Waste” means Solid Waste that cannot and/or would not typically be accommodated within a Cart. General examples include furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as “white goods”), residential waste (including wood waste, tree trucks and large branches if no larger than eighteen inches (18”) in diameter and four feet (4’) in length, scrap wood, and debris from building remodeling not exceeding one cubic yard per collection. A specific list indicating the materials that will be considered Bulky Waste and will not be accepted, is included as Exhibit 5. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Waste and will be accepted, the Contract Administrator will make a final determination. Notwithstanding the above, Bulky Waste does not include materials herein defined as Exempt Waste, and these materials will not be accepted. Bulky Waste must have been generated on the Customer’s Premises.

1.12 CALRECYCLE

“CalRecycle” means the California Department of Conservation, Division of Recycling.

1.13 CAN

“Can” means a container supplied by the Customer for collection of solid waste.

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

1.14 CART

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

1.15 CELL PHONES

“Cell Phones” means all telephones used for mobile or cellular communications including batteries used to power cell phones.

1.16 CITY

“City” means the City of Oceanside, California.

1.17 CITY COUNCIL

“City Council” means the City Council of the City of Oceanside, California.

1.18 CITY FACILITIES

“City Facilities” means those City properties listed in Exhibit 4 which is attached to and included in this Contract.

1.19 CITY MANAGER

“City Manager” means the City Manager of the City of Oceanside or the City Manager’s designee.

1.20 CNG FUELING STATION

“CNG Fueling Station” means a facility for fueling Collection vehicles, and other vehicles used by the Contractor, with compressed natural gas, to be constructed at a Contractor facility located in the City.

1.21 COLLECTION SERVICE

“Collection Service” means the process whereby Solid Waste is removed and transported from within the City.

1.22 COLLECTOR PAYMENT

“Collector Payment” means the payments paid to City by the Contractor pursuant to Section 8.02.

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1.23 COMMERCIAL PREMISES

“Commercial Premises” means Premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property.

1.24 COMMERCIAL SERVICE

“Commercial Service” means Solid Waste Services performed at or for Commercial Premises.

1.25 COMINGLED

“Commingled” or “Commingle” means the placement by the Waste Generator of materials that would otherwise become Solid Waste (such as glass bottles, metal cans, newspapers, cardboard, plastic containers, etc.) together into a Containers(s) for the purpose of allowing the Recycling of such materials.

1.26 COMPACTOR

“Compactor” refers to Bin or Roll-off Box with a mechanical apparatus that serves to compact the content of the container, regardless of size, whether stationary or mobile.

1.27 CONSTRUCTION AND DEMOLITION DEBRIS

“Construction and Demolition Debris” means Solid Waste generated at a Premises that is directly related to construction, remodeling, repair or demolition activities occurring thereon.

1.28 CONTAINER

“Container” means any and all types of receptacles, including Cans, Carts, Crates, Bins and Roll-Off Boxes.

1.29 CONTAMINATION FEE

“Contamination Fee” means an amount charged by Contractor to a MFD Customer or Commercial Customer, to recover its costs for separating Solid Waste placed in Recyclable Materials or Green Waste Containers, or for arranging special, unscheduled Collections.

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1.30 CONTRACT

“Contract” means this Solid Waste Services Contract and all amendments hereto.

1.31 CONTRACT ADMINISTRATOR

“Contract Administrator” means the person, or his designee, designated by the City to administer and monitor the provisions of this Contract.

1.32 CONTRACT YEAR

“Contract Year” means each twelve (12) month period from January 1 to December 31, beginning January 1, 2011.

1.33 CONTRACTOR

“Contractor” means the person or entity entering into this Contract with the City, as identified in the introductory paragraph of this Contract.

1.34 COUNTY

“County” means San Diego County, California.

1.35 CPI

“CPI” means the either the change in the Consumer Price Index for All Urban Consumers (CPI-U), U.S. Average, all items index, or seventy-five percent (75%) of the change Consumer Price Index, all urban consumers, San Diego Metropolitan Area, whichever produces the highest percentage change for any adjustment to compensation or payment amounts utilizing this index.

1.36 CRATE

“Crate” means an approximately twelve (12)-gallon open top plastic container used for the Collection of Recyclable Materials.

1.37 CUSTOMER

“Customer” means a Person receiving Solid Waste Services from Contractor pursuant to the terms of this Contract.

1.38 DISPOSAL

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

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1.39 DISPOSAL SITE(S)

“Disposal Site(s)” means the Solid Waste Handling Facility or Facilities utilized for the ultimate Disposal of Solid Waste Collected by Contractor.

1.40 ELECTRONIC WASTE

“Electronic Waste” means “Covered Electronic Wastes” as defined in the Act (Section 42463 of Public Resources Code) including discarded electronic equipment such as, but not limited to, television sets, computer monitors, central processing units (CPUs), laptop computers, and peripherals (e.g., external computer hard drives, computer keyboards, computer mice, and computer printers), and other similar items commonly known as “brown goods” and “e-waste”. Electronic Waste excludes oversized items of that cannot be handled by one (1) person.

1.41 EXEMPT WASTE

“Exempt Waste” means Biohazardous or Biomedical Waste, Hazardous Waste, Sludge, Designated Waste, Stable Matter, waste tires, liquid wastes, Green Waste or lumber that is more than four (4) feet in length in its longest dimension or two (2) feet in diameter, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, and those wastes under the control of the Nuclear Regulatory Commission.

1.42 FOOD WASTE

“Food Waste” means Solid Waste comprised of animal, fruit or vegetable matter that attends the preparation, consumption, decay, dealing in or storage of meats, fish, fowls, fruits or vegetables.

1.43 GREEN WASTE CART

“Green Waste Cart” is a heavy-plastic receptacle with a rated capacity of at least thirty (30) gallons and not more than one-hundred one (101) gallons, having a hinged, tight-fitting lid, and wheels, that is approved by the City for the Collection of Green Waste and is appropriately labeled as a Green Waste Cart.

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1.44 GREEN WASTE

“Green Waste” means any vegetative matter resulting from normal yard and landscaping maintenance that is not more than four (4) feet in its longest dimension or six (6) inches in diameter. Green Waste includes plant debris, such as grass clippings, leaves, pruning, weeds, branches, brush, Holiday trees, and other forms of organic waste that is generated at the Premises wherein the Green Waste is collected. Green Waste Collected from Residential Premises may include yucca and palm fronds, but these materials are considered as Solid Waste and not Green Waste when Collected from Commercial Premises. Green Waste does not include items herein defined as Exempt Waste or materials not normally produced from gardens or landscape areas, such as brick, rock, gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil, and painted or treated wood products.

1.45 GROSS RECEIPTS

“Gross Receipts” means any and all revenue received from Billings by City or Contractor for the Collection, processing, Disposal and transportation of Solid Waste pursuant to this Contract, in accordance with generally accepted accounting principles, without subtracting the Collector Payment, any other payment to City, or any other cost of doing business. Revenue received by the Contractor from the sale of Recyclable Materials, including California Redemption Value, shall not be considered as Gross Receipts.

1.46 HAZARDOUS WASTE

“Hazardous Waste” is any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such law or regulations may be amended from time to time.

1.47 HOUSEHOLD BATTERIES

“Household Batteries” means disposable or rechargeable dry cells (e.g., A, AA, AAA, B, C, D, 9-volt, button-type) commonly used as power sources for household or consumer products including, but not limited to, nickel-cadmium, nickel metal hydride, alkaline, mercury, mercuric oxide, silver oxide, zinc oxide, nickel-zinc, nickel iron, lithium, lithium

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ion, magnesium, manganese, and carbon-zinc batteries, but excluding automotive lead acid batteries.

1.48 HOUSEHOLD HAZARDOUS WASTE (HHW)

“Household Hazardous Waste” means hazardous waste generated at a residential property.

1.49 LATE FEE

“Late Fee” means amounts charged by Contractor to reimburse it for administrative costs arising from payment delinquency, including the cost of notices and adjustments to its accounting records, and may include a fixed fee, interest on past due amounts, or NSF fees.

1.50 MATERIALS RECOVERY FACILITY (“MRF”)

“Materials Recycling Facility” or “MRF” means a fully permitted facility where Solid Waste, Recyclable Materials, and other materials are processed, sorted or separated for the purposes of recovering reusable or Recyclable Materials, processing or composting.

1.51 MAXIMUM CONTRACTOR COMPENSATION

“Maximum Contractor Compensation” means the maximum amount that Contractor may receive, either from the City or from Billings to Customers, as full, entire and complete compensation due pursuant to this Contract for all labor, equipment, materials and supplies, taxes, insurance, bonds, letters of credit, overhead, disposal, transfer, profit and all other things necessary to perform all the services required by this Contract in the manner and at the times prescribed. Contractor has the right in its sole discretion to accept less than the maximum amount.

1.52 MULTI-FAMILY DWELLING (MFD)

“Multi-Family Dwelling” or “MFD” means a distinct living unit within a Multi-Family Residential Complex.

1.53 MULTI-FAMILY RESIDENTIAL COMPLEX

“Multi-Family Residential Complex” means any building or structure, or portion thereof, located in City which is used for residential housing purposes, irrespective of whether

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residency at that property is transient, temporary, or permanent, and having four (4) or more distinct living units.

1.54 NON-COLLECTION NOTICE

“Non-Collection Notice” is a form developed and used by the Contractor, as approved by the City, to notify Customers of the reason for non-collection of materials set out by the Customer for Collection by Contractor pursuant to this Contract.

1.55 OCCUPANT

“Occupant” refers to a person who occupies Premises.

1.56 ON-CALL SERVICE

“On-Call Service” means Collection Service provided by Contractor that is not regularly scheduled or is scheduled more than twenty-four (24) hours in advance. On-Call Service is initiated by a Customer by calling, emailing, or requesting the service in person at Contractor’s office.

1.57 Overage Fee

“Overage Fee” means a fee charged by Contractor to a MFD Customer or Commercial Customer to compensate it for expenses arising from overfilling of Containers by a Customer, including documenting the incident, cleaning up litter and debris, and paying additional disposal charges.

1.58 OWNER

“Owner” means the Person holding legal title to the real property constituting the Premises to which Solid Waste service is to be provided under this Contract.

1.59 PERSON

“Person” means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, the County of San Diego, cities, and special purpose districts.

1.60 PREMISES

“Premises” means any land or building where Solid Waste is generated or accumulated.

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1.61 RATE YEAR

“Rate Year” means each July 1 through June 30 period during the Term, beginning January 1, 2011, or portion thereof.

1.62 REBUILT VEHICLE

For purposes of this Contract, “rebuilt” means, at a minimum, replacement of worn parts and reconditioning or replacement of hydraulic systems, transmissions, differentials, electrical systems, engines, and brake systems. In addition, the rebuilt vehicle must be repainted and its tires must have at least eighty-five percent (85%) of tread remaining.

1.63 RECYCLING

“Recycling” means the processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling. Recycling does not include use of Solid Waste for conversion to energy.

1.64 RECYCLABLE MATERIALS

“Recyclable Materials” means those materials that are capable of being recycled. Recyclable Materials include: newsprint (including inserts); mixed paper (including magazines, catalogs, envelopes, junk mail, corrugated cardboard, Kraft brown bags and paper, paperboard, paper egg cartons, office ledger paper, and telephone books); glass containers; aluminum beverage containers; small scrap and cast aluminum (not exceeding ten (10) pounds in weight nor two (2) feet in any dimension for any single item); steel including “tin” cans and small scrap (not exceeding ten (10) pounds in weight nor two (2) feet in any dimension for any single item); bimetal containers; mixed plastics such as plastic containers (1-7), and bottles including containers made of HDPE, LDPE, PET, or PVC; and aseptic containers. Polystyrene foam and film plastic, including plastic bags are specifically excluded from collection and processing.

1.65 RECYCLING BIN

“Recycling Bin” means a metal or rigid plastic container, with a capacity of two (2) cubic yards up to and including six (6) cubic yards, designed or intended to be mechanically

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dumped into a loader packer-type recycling truck, that is approved for such purpose by the City and is appropriately labeled as a Recycling Bin.

1.66 RECYCLING CART

“Recycling Cart” is a heavy-plastic receptacle with a rated capacity of at least thirty (30) gallons and not more than one-hundred one (101) gallons, having a hinged, tight-fitting lid, and wheels, that is approved by the City for the Collection of Recyclable Materials and is appropriately labeled as a Recycling Cart.

1.67 RESIDENTIAL PREMISES

“Residential Premises” means Premises upon which Single-Family or Multi-Family Dwellings exist, including, without limitation, apartments, boarding or rooming houses, condominiums, mobile homes, efficiency apartments, and second units.

1.68 RESIDENTIAL SERVICE

“Residential Service” means services performed at and for Residential Premises.

1.69 RE-START FEE

“Re-start Fee” means a fee charged by Contractor where re-establishing service following a suspension of service due to non-payment. However, the Re-start Fee will not apply to existing Commercial Customers that move to a new business location within the City, or to a change in ownership at a MFD currently receiving service.

1.70 ROLL-OFF BOX

“Roll-Off Box” means a metal container with a capacity of (10) or more cubic yards that is normally loaded onto a motor vehicle and transported to an appropriate facility.

1.71 ROLL-OUT SERVICE

“Roll-out Service” means a service provided to MFD’s and Commercial Premises where Contractor’s driver must dismount the Collection vehicle and move one (1) or more Bins in order to accomplish Collection using the standard Collection Vehicle.

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1.72 SCOUT SERVICE

“Scout Service” means a service provided to MFD’s or Commercial Premises where a smaller truck is required to move one (1) or more Bins to a location where Collection can be accomplished using the standard Collection vehicle.

1.73 SERVICE AREA

“Service Area” means the corporate limits of the City of Oceanside.

1.74 SINGLE-FAMILY DWELLING (SFD)

“Single-Family Dwelling” or “SFD” means a distinct living unit within a Single-Family Residential Premises.

1.75 SINGLE-FAMILY RESIDENTIAL PREMISES

“Single-Family Residential Premises” means any building or structure, or portion thereof, in City which is used for residential housing purposes, irrespective of whether residence therein is transient, temporary or permanent, and having three (3) or fewer distinct living units, in which each of the premises receives individual solid waste Collection Service using Carts.

1.76 SOLID WASTE

“Solid Waste” means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including refuse, Construction and Demolition Debris, Bulky Waste, Recyclable Materials, and Green Waste, Food 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. Solid Waste does not include Exempt Waste.

1.77 SOLID WASTE CART

“Solid Waste Cart” is a heavy-plastic receptacle with a rated capacity of at least thirty (30) gallons and not more than one-hundred one (101) gallons, having a hinged, tight-fitting lid, and wheels, that is approved by the City for the Collection of Solid Waste and is appropriately labeled as a Solid Waste Cart.

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1.78 SOLID WASTE SERVICES

“Solid Waste Services” means the Collection, transfer, transport, Recycling, processing and Disposal of Solid Waste.

1.79 SOURCE SEPARATED

“Source Separated” means the segregation by the Waste Generator of materials that would otherwise become Solid Waste (such as glass bottles, metal cans, newspapers, cardboard, plastic containers, etc.) into separate Containers(s) for each material for the purpose of allowing the Recycling of such materials.

1.80 TRANSFORMATION

“Transformation” means incineration, pyrolysis, distillation, gasification, or biological conversion other than composting.

1.81 TRANSFER STATION

“Transfer Station” means a Facility that receives Solid Waste from collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may or may not also include MRFs, transferring residual Solid Waste (Solid Waste left after the sorting of Recyclable Materials) to landfills and Recyclable Materials, including Green Waste and/or Construction and Demolition debris, to processors, brokers or end-users.

1.82 UNIVERSAL WASTE OR U-WASTE

“Universal Waste” or “U-Waste” means all waste defined by Title 22, Subsections 66273.1 through 66273.9 of the California Code of Regulations. These include, but are not limited to, batteries, fluorescent light bulbs, or mercury switches.

1.83 WASTE GENERATOR

“Waste Generator” means any Person as defined by the Public Resources Code, whose act or process produced Solid Waste as defined in the Public Resources Code.

1.84 WHITE GOODS

“White Goods” means inoperative and discarded refrigerators, microwave ovens, ranges, water heaters, freezers, and other similar household appliances.

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1.85 WORK DAY

“Work Day” means any day, Monday through Saturday that is not a holiday as set forth in Section 3 of this Contract.

ARTICLE 2. TERM OF CONTRACT

2.01 EFFECTIVE DATE; COMMENCEMENT OF SERVICES

This Contract shall become effective at the date first set forth above (the “Effective Date”). The obligations of the parties hereunder, and the provision of Solid Waste Services by Contractor, shall commence on January 1, 2011. Contractor understands and agrees that the time between the Effective Date and January 1, 2011, is intended to provide Contractor with ample and sufficient planning time to transition to the new services specified in this Contract.

2.02 TERM

Unless terminated in accordance with Section 13, the term of this Contract shall be for a period beginning on the Effective Date, and terminating on December 31, 2023.

ARTICLE 3. SCOPE OF CONTRACT

3.01 GRANT OF CONTRACT

Except as otherwise provided in this Contract, the Contractor is herein granted the exclusive right to provide Residential Collection Services and Solid Waste Services and Commercial Collection Services and Solid Waste Services in the Service Area. No other solid waste or recycling services shall be exclusive to the Contractor.

3.02 LIMITATIONS ON SCOPE OF GRANT TO CONTRACTOR

The right granted to the Contractor is exclusive, except for the categories of solid waste listed below. The granting of this right 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 the City any authorization that is required by law. Contractor may, but is not obligated to, provide the services described below on a non-exclusive basis.

- a) Source-separated Recyclable Materials that the Waste Generator sells to, or otherwise receives compensation from, other persons in a manner resulting in a

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- net payment to the customer after consideration of collection, handling, or processing costs;
- b) Solid Waste, including Recyclable Materials, Green Waste and Bulky Waste, which is removed from any Premises by the Waste Generator, and which is transported personally by such Generator (or by its full-time employees) to a processing or disposal facility in a manner consistent with all applicable laws and regulations;
 - c) The donation of source-separated materials to any Person or entity;
 - d) Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Sections 14500, et seq., California Public Resources Code;
 - e) 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, as opposed to a hauling service;
 - f) Construction and Demolition Waste that is incidentally removed by a duly-licensed construction or demolition company, as part of a total service offered by such licensed company or by the City, and where the licensed company uses its own equipment and employees;
 - g) The collection, transfer, transport, Recycling, processing, and disposal of animal waste and remains from slaughterhouse or butcher shops for use as tallow, or dead animals;
 - h) The collection, transfer, transport, Recycling, processing, and disposal of Hazardous Substances, Hazardous Waste, Biohazardous Waste, Exempt Waste, and radioactive waste regardless of its source;
 - i) The collection, transfer, transport, Recycling, processing, and disposal of Solid Waste by City through City officers or employees in the normal course of their employment; and,
 - j) Solid Waste Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste.

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3.03 RECYCLABLE MATERIALS AND BULKY WASTE DISPOSAL BY WASTE GENERATOR

Nothing in this Contract shall be construed as requiring Customers to set out Recyclable Materials or Bulky Waste for Collection by Contractor. Customers may make arrangements for handling of Recyclable Materials and Bulky Waste by other appropriate means, including but not limited to, taking Recyclable Materials or Bulky Waste to drop-off facilities and donating or selling such items to private or public entities.

ARTICLE 4. COLLECTION SERVICES

4.01 GENERAL

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

The work to be done by Contractor pursuant to this Contract shall be accomplished in a thorough and professional manner so that all Customers are provided reliable, courteous and high-quality Solid Waste Services at all times. The enumeration of, and specification of requirements for, particular aspects of service quality shall not relieve Contractor of the duty of accomplishing all other aspects in the manner provided in this section, whether such other aspects are enumerated elsewhere in the Contract or not.

4.02 SOLID WASTE COLLECTION

4.02.1 Single-Family Dwelling (SFD) Solid Waste Collection

On the date of commencement of services under this Contract, Contractor shall collect and remove Solid Waste from all SFDs once per week from Customer-provided Cans. Thereafter, subject to Section 5.09, delivery of Contractor-provided Solid Waste Carts will commence beginning on or after October 1, 2011. Subject to Section 5.09, on or before October 1, 2012, Solid Waste Cart deliveries shall be completed and Contractor

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shall collect and remove Solid Waste from all SFDs once per week from Contractor-provided Solid Waste Carts. Contractor shall provide each Customer with a ninety-six (96) gallon Solid Waste Cart as the default service. Customers may request to substitute the ninety-six (96) gallon Solid Waste Cart with a sixty-four (64) gallon Solid Waste Cart at no additional cost in accordance with Section 7.06.1. . In addition, Customers are entitled to one (1) free Solid Waste Cart replacement during the Term. No discount will be given for using a sixty-four (64) gallon Solid Waste Cart.

Subject to Section 5.09, on October 1, 2011 Contractor shall commence implementation of a small quantity generator service to SFD's who generate lesser volumes of Solid Waste, in conjunction with its delivery of Contractor-provided Carts. City and Contractor will work cooperatively to develop the qualification and approval process for SFD small quantity generators. Small quantity generators will receive a thirty-five (35) gallon cart at a reduced rate. The small quantity generator rate shall become effective for individual Customers upon delivery of the thirty-five (35) gallon Cart. Prior to October 1 2011, Contractor shall contact targeted groups of SFD's to determine their interest in small quantity generator service, such as HOA's and mobile home parks.

Customers that regularly require more than 96 gallons of Solid Waste Cart capacity may request additional Solid Waste Carts for an additional charge per Cart per month in accordance with the approved rate schedule.

Contractor shall Collect Carts curbside.

Collection of Green Waste, Recyclable Materials, and Solid Waste from the SFD shall occur on the same day each week.

Contractor shall provide temporary Solid Waste collection service to SFD's, upon request of the Customer, using Bins, Roll-offs or Bagster® Bags.

4.02.2 Multi-Family Dwellings (MFD) Solid Waste Collection

Contractor shall collect Solid Waste from MFDs as frequently as scheduled by Customer, but not less than once per week and more frequently if required to handle the waste generated at the Premises where the Bins are located, or in accordance with applicable rules and regulations. The Contractor shall provide Bins as part of the Collection Service at rates set forth in Exhibit 1, as adjusted. The size of the Bins and

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the frequency (above the minimum) of Collection shall be determined between the Customer and the Contractor. Size and frequency shall be sufficient to provide that no Solid Waste need be placed outside the Bins. If a customer appeals the requirement to subscribe to a Bin service as opposed to Cart service and Contract Administrator determines that Cart service would be appropriate, Contract Administrator may waive Customer's requirement to subscribe to Bin service, and such customer will be considered a SFD customer.

Contractor shall allow MFD Customers to use Bins for Solid Waste Collection that are shared by the Occupants of the Premises. Contractor shall provide one or more Bin(s) to such Customers as requested by Customer, provided that capacity shall be sufficient to provide that no Solid Waste need be placed outside the Bin(s). City shall make final determination as to the number and size of Bins, and frequency of Collection to be provided to Customers.

Contractor shall give special consideration when determining the Collection location for Multi-Family Residential Complexes to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated Collection location, if disputed by Customer or Contractor, shall be determined by the City. Additionally, if in the City's opinion the location of an existing Collection location is inappropriate, City may require the Customer or Contractor to relocate the Collection Containers.

Contractor shall provide special services such as Roll-out Service, or Scout Service or use of locking Containers when requested by the Customer, at the Rate set forth in Exhibit 1, as adjusted. Contractor may provide customized Containers at the request of the Customer, including Containers of a size not typically provided, where the request can reasonably be accommodated, at the Rate agreed to with the Customer, with any disputes as to the Rate resolved by the Contract Administrator.

Contractor shall provide temporary collection service to MFD's, upon request of the Customer, using Bins, Roll-offs or Bagster® Bags.

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4.02.3 Commercial Premises Solid Waste Collection

Contractor shall collect Solid Waste from Commercial Premises as frequently as scheduled by Customer, but not less than once per week and more frequently if required to handle the waste generated at the Premises where the Containers are located, or in accordance with applicable rules and regulations. The Contractor shall provide Containers as part of the Collection Service at Rates set forth in Exhibit 1, as adjusted. The size of the container and the frequency (above the minimum) of Collection shall be determined between the Customer and the Contractor. Size and frequency shall be sufficient to provide that no Solid Waste need be placed outside the Container.

Specifically, the Contractor shall offer the following Collection Service methodologies to Commercial Customers:

1. Individual Bin or Cart Service. Contractor shall allow each Commercial Premises to use Bins, Compactors, or Roll-Off Boxes for Solid Waste Collection. If City Contract Administrator and Contractor agree that Cart service for a Commercial Premises generating small amounts of Solid Waste is appropriate, Contractor shall Collect, at a minimum of once per week from such Commercial Premises, the Solid Waste which has been compacted or otherwise placed, kept or accumulated in Carts and placed at designated location, meeting Oceanside City Code requirements prior to Contractor's normally weekly Collection time. This small-volume Commercial Collection service shall be no more than two (2) carts per Commercial Premises per week.
2. Centralized Bin or Cart Service. Contractor shall allow each Commercial Premises to use Bins or Carts for Solid Waste Collection that are shared by the Occupants of two or more adjacent Commercial Premises. In such case, Contractor shall provide one or more Carts or Bins as requested by the Customer(s) provided that capacity shall be sufficient to provide that no Solid Waste need be placed outside the Container(s).
3. Permanent Roll-Off Boxes and Compactors. Contractor shall allow a Customer to use a Roll-Off Box or Compactor for Solid Waste Collection to meet the Customer's

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permanent Disposal needs. In such case, Contractor shall provide Customer with a choice of Container capacities including ten (10), twenty (20), and forty (40) cubic yards. Contractor shall offer Customers the option to purchase or lease Roll-Off Boxes or Compactors through either the Contractor or an outside vendor. Regular maintenance of Compactors that are leased or provided by Contractor shall be provided by Contractor (or outside vendor) as frequently as needed to keep the Compactors in good working order and functioning at high compaction levels. Contractor is not required to provide maintenance for Compactors obtained by the Customer through an outside vendor.

4. Special Services. Contractor shall provide special services such as Roll-out Service, or Scout Service or use of locking Containers when requested by the Customer, at the Rate set forth in Exhibit 1, as adjusted. Contractor may provide customized Containers at the request of the Customer, including Containers of a size not typically provided, where the request can reasonably be accommodated, at the Rate agreed to with the Customer, with any disputes as to the Rate resolved by the Contract Administrator.
5. Temporary Services. Contractor shall provide temporary collection service to Commercial Premises, upon request of the Customer, using Bins, Roll-offs or Bagster® Bags.

4.02.4 City Facilities Solid Waste and Recyclable Materials Collection

Contractor shall provide scheduled, permanent Solid Waste and Recyclable Materials Collection at City Facilities as frequently as scheduled by the City, but not less than once per week. City Facilities will be provided Collection Services at no charge. Contractor shall allow each City Facility to use Carts, Bins, Compactors, or Roll-Off Boxes for Solid Waste and Recyclable Materials Collection, as determined by City. The list of City Facilities receiving collection service, Container size, and frequency or service is set forth in Exhibit 4 included herein, and the value of these services as of the Effective Date is \$813,730.00. If there is any change in City Facilities receiving service or a change in the Container size or frequency of service that causes the value of these services to exceed \$813,730.00, as adjusted by the same percentage that the Bin

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Service is adjusted in accordance with Article 9, Contractor shall be entitled to charge the City for services beyond the above amount at the then-current Rate.

4.03 RECYCLING COLLECTION

4.03.1 Single-Family Dwelling (SFD) Recycling Collection

On the date of commencement of services under this Contract, Contractor shall collect and remove Source-Separated Recyclable Materials from all SFDs once per week from Contractor-provided Crates. Thereafter, subject to Section 5.09, delivery of Contractor-provided Recycling Carts will commence beginning on or after October 1, 2011. Subject to Section 5.09, on or before April 1, 2012, Recycling Cart deliveries shall be completed and Contractor shall collect and remove Commingled Recyclable Materials from all SFDs once per week from Contractor-provided Recycling Carts. Contractor shall provide each Customer with a ninety-six (96) gallon Recycling Cart as the default service.

Customers may request to substitute the ninety-six (96) gallon Recycling Cart with a sixty-four (64) gallon Recycling Cart at no additional cost in accordance with Section 7.06.1. In addition, Customers are entitled to one (1) free Recycling Cart replacement during the Term. Customers that regularly require more than ninety-six (96) gallons of Recycling Cart capacity may request two (2) additional ninety-six (96) Recycling Carts at no additional charge. Delivery of additional Recycling Carts beyond three (3) will be at the rate set forth in Exhibit 1, as adjusted. No discounts will be given for using Sixty-four (64) gallon Carts.

Contractor shall collect Carts curbside.

4.03.2 Multi-Family Dwellings (MFD) Recycling Collection

Contractor shall collect Recyclable Materials from MFDs as frequently as scheduled by Customer, but not less than once per week and more frequently if required to handle the waste generated at the Premises, or in accordance with applicable rules and regulations. The Contractor shall provide Bins or Carts as part of the Collection Service at rates set forth in Exhibit 1, as adjusted. The size of the Bins or Carts, the frequency (above the minimum) of Collection, and the determination whether Contractor will

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provide Source-Separated or commingled recycling shall be made between the Customer and the Contractor. Size and frequency shall be sufficient to provide that no Recyclable Materials need be placed outside the Bins or Carts, but in no event less than at the ratio of two (2) 96-gallon Carts for per twenty-five (25) MFDs at a Multi-Family Residential Complex.

Contractor shall allow MFD Customers to use Bins or Carts for Recyclable Materials Collection that are shared by the Occupants of the Premises. Contractor shall provide one or more Bins or Carts to such Customers as requested by Customer, provided that capacity shall be sufficient to provide that no Recyclable Materials need be placed outside the Bins or Carts. City shall make final determination as to the number and size of Bins and Carts, and frequency of Collection to be provided to shared Customers.

Contractor shall give special consideration when determining the Collection location for Multi-Family Residential Complexes to ensure that the flow of traffic is not impeded and that it does not result in aesthetic degradation of an area. The designated Collection location, if disputed by Customer or Contractor, shall be determined by the City. Additionally, if in the City's opinion the location of an existing Collection location is inappropriate, City may require the Customer or Contractor to relocate the Collection Containers.

Contractor shall provide special services such as Roll-out Service, or Scout Service or use of locking Containers when requested by the Customer, at the Rate set forth in Exhibit 1, as adjusted. Contractor may provide customized Containers at the request of the Customer, including Containers of a size not typically provided, where the request can reasonably be accommodated, at the Rate agreed to with the Customer, with any disputes as to the Rate resolved by the Contract Administrator.

4.03.3 Commercial Premises Recycling Collection

Contractor shall collect Recyclable Materials from Commercial Premises as frequently as scheduled by Customer, but not less than once per week and more frequently if required to handle the waste generated at the Premises where the Containers are located. The Contractor shall provide Containers as part of the Collection Service at Rates set forth in Exhibit 1, as adjusted. The size of the Bins, Carts or Roll-off Box, the

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frequency (above the minimum) of Collection, and the determination whether Contractor will provide Source-Separated or commingled recycling shall be made between the Customer and the Contractor. Size and frequency shall be sufficient to provide that no Recyclable Materials need be placed outside the selected Containers.

Contractor shall provide special services such as Roll-out Service, or Scout Service or use of locking Containers when requested by the Customer, at the Rate set forth in Exhibit 1, as adjusted. Contractor may provide customized Containers at the request of the Customer, including Containers of a size not typically provided, where the request can reasonably be accommodated, at the Rate agreed to with the Customer, with any disputes as to the Rate resolved by the Contract Administrator.

4.03.4 Marketing and Sale of Recyclable Materials

Contractor shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Contract. Contractor may retain revenue from the sale of Recyclable Materials.

4.04 GREEN WASTE RECYCLING COLLECTION

4.04.1 Single-Family Dwelling (SFD) Green Waste Collection

Contractor shall collect Source-Separated Green Waste from SFDs once per week from Contractor-provided Green Waste Carts. Contractor shall provide each Customer with a ninety-six (96) gallon Green Waste Cart as the default service. Customers may request to substitute the ninety-six (96) gallon Green Waste Cart with a sixty-four (64) gallon Green Waste Cart at no additional cost in accordance with Section 7.06.1. In addition, Customers are entitled to one (1) free Green Waste Cart replacement during the Term. Customers that regularly require more than 96 gallons of Green Waste Cart capacity may request one (1) additional Green Waste Cart at no additional charge. Delivery of additional Green Waste Carts beyond two (2) will be at the Rate set forth in Exhibit 1, as adjusted. No discounts will be given for using sixty-four (64) gallon Green Waste Carts. Contractor shall collect Carts curbside.

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4.04.2 Multi-Family and Commercial Premises Green Waste Collection

Multi-Family and Commercial Customers shall have the option of voluntarily subscribing to Green Waste Collection Services and shall pay Contractor for such service in accordance with the Rates set forth in Exhibit 1, as adjusted. Contractor shall collect Source-Separated Green Waste from Multi-Family Residential Complexes and Commercial Premises that have subscribed to Green Waste Collection Service as frequently as scheduled by Customer, but not less than once per week. Contractor shall allow Multi-Family and Commercial Customers to select a Collection Service method that best suits the needs of its Premises. Specifically, the Contractor shall offer the Containers and service choices that are similar to that offered for Commercial Solid Waste Collection pursuant to Section 4.02.3. Contractor shall collect Green Waste at the location agreed upon by Contractor and Customer. The designated collection location, if disputed by Customer or Contractor, shall be determined by the City. Where Green Waste Collected from Commercial Premises requires special handling due the composition of material or the amount of contamination, Contractor may charge a special collection surcharge in an amount agreed to with the Customer, with any disputes as to the amount resolved by the Contract Administrator.

4.04.3 Annual Holiday Tree Recycling Collection

Annually, commencing the day after December 25 and three (3) weeks thereafter, the Contractor shall collect Holiday Trees from SFDs. SFD Customers are required to place the Holiday Trees curbside on the scheduled Collection day for Solid Waste. Holiday Trees must be cut into lengths no longer than four (4) feet, be free of ornaments, garlands, tinsel and flocking, and stands must be removed. Holiday Trees from MFDs will be collected on Customer's normal collection days at a central location designated by the Customer at the Multi-Family Premises.

Contractor shall not be required to Collect Holiday Trees that cannot be recycled or composted, due to, among other things, tinsel, flocking or ornaments.

Contractor shall deliver the collected Holiday Trees to an appropriate facility for processing. This annual service shall be provided at no additional charge.

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4.05 ON-CALL BULKY WASTE COLLECTION SERVICE

4.05.1 SFD and MFD On-Call Bulky Waste Collection

The Contractor shall provide Bulky Waste Collection Service to all SFD and MFD Customers in the Service Area whose Bulky Waste have been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the Contractor and Customer, that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle.

Customers are required to call in to schedule a Bulky Waste pick-up by 5:00 PM the day prior to the Customer's regular Collection day. Customer may place up to five (5) items out for collection per pick-up. Each SFD and MFD is entitled to three (3) pick-ups per dwelling per Contract Year at no charge. Additional Bulky Waste pickups will be charged at the Rate set forth in Exhibit 1, as adjusted.

4.05.2 Commercial On-Call Bulky Waste Collection

Contractor shall provide Bulky Waste Pickup service for Commercial Customers at the Rate set forth in Exhibit 1, as adjusted.

4.05.3 Bulky Waste Collection Restrictions

The following applies to items Collected under this Section:

- The following items will not be picked up: Hazardous Substances and Hazardous Waste. Waste oil, antifreeze, and Universal Waste shall be collected and disposed of in accordance with Section 4.06. Effective July 1, 2011, Electronic Waste from SFD's and MFDs shall be collected in accordance with Section 4.07, and not as Bulky Waste.
- Bulky Waste which habitually is placed at any location by importation from outside the City.
- Material exceeding one cubic yard, generated as a result of construction, demolition or remodeling activities.
- Vehicles used for Collection of Bulky Waste shall not use compactor mechanisms or mechanical handling equipment that may damage reusable goods or release Freon or other gases from pressurized appliances.

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4.05.4 Bulky Waste Containing Freon

In the event Contractor Collects Bulky Waste that contains Freon, Contractor shall handle such Bulky Waste in a manner such that the Bulky Waste is not subject to regulation as Hazardous Waste under applicable state and federal laws or regulations.

4.05.5 Maximum Reuse and Recycling

Contractor shall dispose of Bulky Waste collected from Customers pursuant to this Contract in accordance with the following hierarchy:

- Reuse as is (where energy efficiency is not compromised)
- Disassemble for reuse or Recycling
- Recycle
- Disposal

Contractor shall not landfill such Bulky Waste unless the Bulky Waste cannot be reused or recycled. Contractor shall record by class and weight (in tons) the Solid Waste Collected under this Section 4.05, and shall record the kinds and weights (in tons) of Solid Waste diverted, if any, from landfilling through Recycling, reuse, Transformation or other means of diversion.

4.05.6 City Direction of Bulky Waste

City reserves the right to direct Contractor to take Bulky Waste collected pursuant to this Section to a designated site or sites for the purpose of permitting persons who will reuse or recycle such Bulky Waste to obtain the Bulky Waste. Contractor shall have no obligation to dispose of the Bulky Waste or Bulky Waste residue remaining at the directed site or sites after reusers and recyclers have removed reusable or recyclable Bulky Waste. Contractor shall be entitled to a rate adjustment to recover any increased costs in accordance with Section 14.07.2.

In addition, Contractor, upon receipt of notice (which may be provided telephonically) from Contract Administrator or Code Enforcement, shall pick up and dispose of Bulky Items left adjacent to public streets, alleys, or other rights of way by no later than 12:00 noon of the Work Day prior to Contractor's normal weekly collection day for that area.

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4.06 HOUSEHOLD HAZARDOUS WASTE AND UNIVERSAL WASTE

OPTION 1 During the term of this Contract, Contractor will provide a Household Hazardous Waste Facility for receipt of HHW and Universal Waste at a location within the City, currently at 2880 Industry Street, Oceanside, CA. The facility will operate every other Saturday between 9:00 am and 1:00 pm, except for Saturdays following a designated Holiday.

OR

OPTION 2 During the Term of this Contract, commencing April 1, 2011, Contractor shall provide for curbside collection of HHW and Universal Waste generated by SFD's and MFD's. Contractor shall provide these services in an amount of up to \$200,000.00 each Rate Year (prorated as needed). There will be no limit on the number of items or the number of collections per Premises per Rate Year. Customers will be provided service on a first-come, first served basis until the dollar value of the services is expended, at which time Contractor shall have no obligation to continue to provide these services for the remainder of the Rate Year. Contractor shall collect HHW within four (4) Work Days from receipt of a request from service from the Customer.

Contractor is responsible for the acceptance, packing for transport, transport, and disposal of HHW [OPTION 1 received at the facility] [OPTION 2 Collected]. The program will include, at a minimum, the items listed on the following page listed as Acceptable Waste. The Contractor is not required to accept the items listed on the following page as Unacceptable Waste. The City agrees to assist the Contractor in applying for grants to fund HHW collection; provided, however, that where the City has used reasonable efforts to assist the Contractor, the Contractor's obligation to provide HHW collection shall continue even though grant funding is not obtained.

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ACCEPTABLE WASTE:

Garden Chemicals

- Insect sprays
- Weed killers
- Other poisons
- Fertilizer

Swimming Pool Chemicals

- Pool acid
- Chlorine: tablets, liquid

Automotive Waste

- Motor oil
- Antifreeze
- Waxes
- Polishes
- Cleaners
- Brake fluid
- Gasoline
- Used oil filters
- Oily rags
- Transmission fluid
- Windshield washer fluid
- Hydraulic fluid
- Automotive batteries

Paint Products

- Oil-based paint
- Latex paint
- Spray paint
- Stripper
- Stains
- Caulking
- Wood preservative
- Glue
- Thinner

Household Cleaners

- Bleach
- Cleaning compounds
- Floor stripper
- Drain cleaner
- Tile remover
- Tile cleaners
- Rust remover

Misc. Household

- Household batteries-thermometers
- Fluorescent tubes
- Thermometers
- Hobby glue
- Artist's paint
- Medicines (pills-capsules loose)
- Sharps

UNACCEPTABLE WASTE:

- Biological waste
- Radioactive materials
- Smoke detectors
- Ammunition
- Explosives
- Leaking containers
- Unknowns (must be tested)
- Fire extinguishers
- Pressurized cylinders
- Tires
- Appliances (larger than microwave)
- Waste in 6-gallon or larger container
- Commercial chemicals (for business use)
- Asbestos
- Trash
- Construction materials
- Not more than five gallons of driveway sealer
- Liquid mercury

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4.07 ON CALL ELECTRONIC WASTE COLLECTION

Effective July 1, 2011, Contractor shall provide Electronic Waste Collection Service to all SFD and MFD Customers in the Service Area whose Electronic Waste has been placed within three (3) feet of the curb, swale, paved surface of the public roadway, closest accessible roadway, or other such location agreed to by the Contractor and Customer, that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle.

Customers are required to call in to schedule an Electronic Waste pick-up by 5:00 PM the day prior to the Customer's regular Collection day.

Customer may place up to five (5) items out for collection per pick-up. SFD and MFD Customers are entitled to three (3) pick-ups per dwelling per Contract Year at no additional charge. Additional items may be delivered to the Buy-Back Center. Contractor shall not be required to collect oversized items of Electronic Waste that cannot be handled by one (1) person. However, such items will be accepted at the Buy-Back Center at no charge.

4.08 CELL PHONES AND USED BATTERIES COLLECTION

During the Term of this Contract, Contractor shall provide for curbside collection of Cell Phones and Household Batteries generated by SFD's, commencing with respect to each Customer upon its receipt of a Cart for Collection of Recyclable Materials. The customer will place these items into a sealed clear plastic bag, and place the plastic bag on top of the Recyclable Materials Cart for Collection on the regularly-scheduled Collection day.

4.09 SHARPS WASTE COLLECTION

During the Term of the Contract, Contractor shall provide for Sharps Waste generated by SFDs or MFDs at no charge, at the Buy-Back Center or through a container placed at up to seven (7) locations at City facilities designated by the City. Contractor will replace the container at the City facility up to four (4) times each Contract Year, on an as-needed basis. Contractor shall also make available to Customers a sharps by mail service from a third party provider through its website, at the rate established by the

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third party provider from time to time. "Sharps waste" includes, but is not limited to, hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.

4.10 BUY-BACK CENTER

During the term of this Contract, Contractor will provide a Buy-Back Center for receipt of CRV materials (aluminum and bi-metal cans, glass and plastic bottles) at a location within the City, currently at 2880 Industry Street, Oceanside, CA. The facility will operate Tuesday through Saturday, 8:00 AM to 4:00 PM. Contractor will also accept Electronic Waste, Sharps Waste, Universal Waste, Cell Phones, Household Batteries, motor oil, oil filters, and anti-freeze from Residential Customers at the Buy-Back Center at no charge.

4.11 ANNUAL CLEANUP EVENTS

During the Term of this Contract, Contractor shall provide two (2) cleanup events each Rate Year to SFDs and MFDs, where Solid Waste, including Bulky Waste, can be placed at the curb or designated location in unlimited amounts for Collection of the regularly-scheduled Collection Day. The events shall be held in the Spring and the Fall.

4.12 CITY-SPONSORED EVENTS

Contractor shall provide up to twenty (20) Bins, Roll-off Boxes or Bagster® Bags for Solid Waste and Recycling Collection at City-sponsored projects, cleanups or special events at no additional charge each Contract year for the term of the contract. City-sponsored events include temporary, unscheduled service to City facilities, City property or public streets and sidewalks, including City construction, demolition and renovation projects. Contractor shall not be required to Collect Exempt Waste.

ARTICLE 5. DISPOSAL, PROCESSING, AND DIVERSION REQUIREMENTS

5.01 TRANSPORTATION OF SOLID WASTE

Contractor shall transport all Solid Waste Collected to the Transfer Station, MRF, Transformation Facility or Disposal Site. Contractor agrees to make all reasonable efforts to separate Recyclable Materials from Solid Waste for diversion from landfill Disposal.

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Contractor shall maintain accurate 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 such quantities.

Contractor shall cooperate with the operator of any Transfer Station, MRF, Transformation Facility or Disposal Site with regard to operations therein, including, for example, complying with directions from the operator to unload Collection vehicles in designated areas, accommodating to maintenance operations and construction of new facilities, cooperating with its Hazardous Waste exclusion program, and so forth.

5.02 DISPOSAL OF SOLID WASTE

The Contractor shall dispose of Solid Waste Collected, but not sent to a processing or Transformation Facility, at a Disposal Site selected by Contractor. Notwithstanding the above, the Contractor will not use Gregory Canyon Landfill without the approval of the City Council.

5.03 STATUS OF DISPOSAL SITE

Any Disposal Site utilized by Contractor shall be designed and constructed in accordance with 23 California Code of Regulations Section 2510 et seq. ("Subchapter 15"). Any such Disposal Facility shall have been issued all permits from federal, state, regional, county and city agencies necessary for it to operate as a Class III Nonhazardous Solid Waste Landfill.

5.04 GREEN WASTE PROCESSING SERVICES

Contractor shall deliver all Collected Green Waste to a fully permitted Green Waste Processing Facility or Green Waste transfer station. The City reserves the right to direct the facility to which Green Waste is processed during the Term, subject to applicable law. As of the Effective Date, the City has directed that Green Waste Collected in the City be transported to the City's El Corazon Compost Facility for processing. The El Corazon Compost Facility is undergoing permit revisions which may result in expanded organic feedstocks, such as food waste, paper products and other compostable organic wastes. As these feedstocks are added to the permit, Contractor will work to the best of its abilities to implement Commercial and Residential organic waste recycling programs.

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It is in the best interest of the City to develop these programs and Contractor will provide appropriate education campaigns.

Should the City direct that Green Waste be transported to a location other than City's El Corazon Compost Facility for processing, Contractor shall be entitled to a rate adjustment in accordance with Section 14.07.02.

All expenses related to Green Waste processing will be the sole responsibility of Contractor.

5.05 CONSTRUCTION AND DEMOLITION WASTE DIVERSION

Upon request of the City, Contractor shall develop a plan to permit and construct a Construction and Demolition Waste processing facility at a Contractor facility located in the City. The parties agree to negotiate in good faith regarding the location, permitting and construction of the facility, and the Rate for service. The City agrees to cooperate with Contractor in the permitting of the facility and expedite processing of any application. Notwithstanding the above, nothing in this section shall be construed as limiting the City's discretion to approve or deny an application to construct this facility.

5.06 MINIMUM RECYCLING REQUIREMENTS

Contractor shall recycle or divert from landfilling sufficient Solid Waste to ensure that the City meets current state law requirements for diversion Citywide. For Contract year 2011, Contractor shall be considered to have met this requirement under this Contract if the City's annual report to CalRecycle shows a greater than 50% diversion rate and if CalRecycle approves the City's reports as having a greater than 50% diversion rate in connection with efforts to meet City's diversion mandate. In determining compliance with state law, the City and Contractor agree to cooperate in good faith to develop representative per capita disposal calculations based on population, level of industry employment, or a combination of both (e.g. hotels, assisted living facilities), as appropriate.

Beginning with Contract Year 2012, if the annual report the City submits to CalRecycle reflects a diversion rate of less than 50%, or if such a report is later revised to reflect a rate less than 50%, the Contractor shall be required to undertake the actions set forth in

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Section 5.07. If a report is revised and approved by CalRecycle to reflect 50% or higher diversion, Contractor's obligations under Section 5.07 shall no longer be applicable.

If the State increases waste diversion requirements, or the City increases waste diversion requirements, Contractor shall be entitled to a rate adjustment in accordance with Sections 14.07.2 and 14.07.3 for the additional waste diversion requirements services that may be required, and the provisions of this Section will apply using the higher diversion rate.

Contractor acknowledges the City's non-binding goal of achieving 75% waste diversion, and agrees to undertake good faith efforts to identify new or enhanced strategies or programs to increase waste diversion to assist the City to meet this goal. Contractor shall report the results of its efforts annually to the City as part its annual report, in accordance with Section 10.03.3.

5.07 FAILURE TO MEET MINIMUM REQUIREMENTS

Upon Contractor's failure to meet the minimum waste diversion requirements set forth above in Section 5.06, and if the City determines that the Contractor has not met waste diversion from the services and programs contemplated under this Contract, the Contractor agrees to implement programs and provide equipment necessary in order for the City to meet the State-mandated 50% diversion requirement. Such programs and equipment may include additional public education efforts, on-site business waste audits, additional Recycling Carts or Bins at multi-family complexes, high grading of commercial loads, secondary processing of commercial solid waste, and processing of Construction and Demolition Waste from Roll-Off Boxes. Should additional programs be required beyond those contemplated under this Contract, the Contractor shall be entitled to an adjustment in rates in accordance with Section 14.07.2.

5.08 OWNERSHIP OF SOLID WASTE

City and Contractor understand and agree that it is Contractor, and not City, who will arrange to collect Solid Waste, that City has not, and, by this Contract does not, instruct Contractor on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste collected by Contractor in City. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste that is collected by

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Contractor which otherwise might exist in or with City in the absence of this Contract is hereby transferred to Contractor; and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Contract. At no time does City obtain any right of ownership or possession of Solid Waste or Recyclable Materials placed for Collection, and nothing in this Contract shall be construed as giving rise to any inference that City has any such rights. City and Contractor agree that, for the purposes of the Uniform Commercial Code and all other laws imposing liability for defective products, it is Contractor, and not City which is to be considered the merchant of goods recycled pursuant to this Contract. Contractor shall have the right to retain, Recycle, process, dispose of, and otherwise use Solid Waste collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste which it collects.

5.09 CONSTRUCTION OF CNG FUELING FACILITY

Contractor shall use reasonable efforts to permit and construct a CNG fueling station at a Contractor facility located in the City on or before October 1, 2011. The parties agree to negotiate in good faith regarding the location, permitting and construction of the fueling station. The City agrees to cooperate with Contractor in the permitting of the facility and expedite processing of any application. Notwithstanding the above, nothing in this section shall be construed as limiting the City's discretion to approve or deny an application to construct this facility.

Notwithstanding any provision herein to the contrary, any implementation schedule in this Contract related to Collection vehicles or the delivery of Carts shall be extended for one (1) month for each month, commencing October 1, 2011, that the CNG Fueling Station is not operational, except where the delay arises from Contractor's demonstrated lack of diligence in pursuing its permitting or construction.

ARTICLE 6. OTHER SERVICES

6.01 RESPONSIBILITY FOR SERVICE BILLING AND COLLECTION

The City shall be responsible for billing and collection of payments from all Residential Customers and Commercial Customers that receive a water bill, and receive scheduled,

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permanent Collection Service. Contractor shall be responsible for the billing and collection of payments from all other Customers.

6.02 CITY BILLING

Bills must be itemized by type of service, but may not designate that portion of a Customer's bill attributable to the Collector Payment as a separate line item. All bills must carry a due date, not "due upon receipt." To start service, new Customers billed by the City will pay a pro-rated amount in advance for the balance of the billing period.

6.02.1 Establishment of Service/Billing Baseline

The City shall compensate Contractor monthly for services where the City provides for billing and collection of payments, in a total amount based on the per-Premises or per-Service charges set forth in Exhibit 1, as adjusted. Between the Effective Date and the commencement date, the Parties agree to meet and confer to identify each Customer billed by the City, the level of service and the applicable Rate.

6.02.2 Contractor Submittal of Billing Information

Contractor agrees to use reasonable efforts to provide City the following information, by the 30th of each month, related to one (1) or more prior calendar months. This information will be incorporated into the next invoice submitted by City to City-billed Customers.

- A. special charges for the previous month;
- B. a listing of all Customer locations where service was initiated or canceled during the previous month;
- C. all changes in the level of service provided to any Customer; or
- D. any applicable changes to the rates for any Customer.

6.02.3 Payment to Contractor

City will pay Contractor all amounts owing by the 30th day of the month of the month following the submittal of information under Section 6.02.2, with respect to that month.

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6.02.4 Annual Reconciliation of City-Billed Customers

Prior to December 31, 2011, and each December 31 thereafter, the Customers billed by the City, for which the Contractor shall be compensated by the City, shall be determined as follows:

A. Not later than September 30 of each year, the City shall provide to the Contractor a listing of the total number of Customers billed by the City, by Customer location and level of service.

B. Contractor shall have 30 days to review the documentation supplied by the City.

C. Contractor shall inform the City Contract Administrator in writing not later than five (5) days following the end of the thirty (30) day review period of any disagreement with the documentation supplied by the City. Failure to so inform the Contract Administrator shall constitute acceptance of the documentation supplied by the City.

D. Contractor and the City Contract Administrator shall meet and confer, and agree to cooperate in good faith to resolve any disagreements. If Contractor and the City Contract Administrator are unable to agree upon the Customers billed by the City and the level of service within 10 days after receipt from the Contractor of the notice of disagreement, the City Manager shall resolve the disagreement, and his determination shall be considered final.

6.02.5 Contractor Accounts Receivable Balance Verification

Between the Effective Date and the commencement date, the Parties agree to meet and confer in good faith to verify the accounts receivable balance owing to Contractor under the prior Contract for the period ending on October 31, 2010.

6.03 CONTRACTOR BILLING

Contractor shall invoice all Customers receiving scheduled, permanent service on a monthly basis in arrears at the Rate set forth in Exhibit 1, as adjusted. Bills must be itemized by type of service, but may not designate that portion of a Customer's bill attributable to the Collector Payment as a separate line item. All bills must carry a due

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date, but may be “due upon receipt” where a date certain is provided before which the remedies provided in Section 6.04.6 will apply. In addition, Contractor shall invoice Customers receiving temporary Bin or Roll-off service, or Bagster® Service in arrears upon the completion of service, as provided in Exhibit 1, as adjusted. Contractor will accept major credit cards for payment of these services. Customers who do not use credit cards may be required to post a security deposit or to pay on a “Cash on Delivery” (C.O.D.) basis.

6.04 BILLING SERVICE REQUIREMENTS

6.04.1 Records

Contractor shall maintain, for inspection by the City, copies of all billings, receipts, and service information, in chronological order, for a period of three (3) years after the date of service. Contractor shall maintain those records in electronic format. City staff or representatives shall be given access to such records upon one (1) Work Day notice.

6.04.2 Rates

City shall establish, by resolution, maximum rates for the types of service provided as described in Exhibit 1, as adjusted. Contractor shall bill and collect at rates that do not exceed the maximum rates set by the City Council. Where a Rate for a particular service is not established in Exhibit 1, Contractor and Customer shall negotiate directly with respect to the Rate, with any disputes resolved by the Contract Administrator, whose decision shall be final.

6.04.3 Partial Month Service

If, during a month, service to Customer is added to or deleted, the Billing shall be pro-rated based on the weekly service rate (weekly service rate shall be the monthly service rate divided by four (4) times the number of actual weeks in the month that service was provided to the Customer).

6.04.4 Temporary Service Stop

Residential Customers may request a temporary service stop and will not be charged for Collection Services during the temporary service stop if such service is stopped for a

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minimum of one continuous month due to extended vacation, home remodeling/home construction. Temporary service stops expire automatically within one month after which Contractor shall automatically resume service to the prior established service level unless Customer requests an additional temporary service stop. Contractor shall resume service to the prior established service level within five (5) days' notice of a request by the Residential Customer to resume service.

6.04.5 Delinquent Service Accounts

Contractor shall diligently pursue collection of delinquent accounts billed by Contractor by every means reasonably available to Contractor, including delinquency letters, telephone calls, employment of collection agencies, and small claims court.

Once payment is thirty (30) days past due, Contractor may send to the Customer a notice that service will be suspended if payment is not made within an additional 30 days. Contractor may also charge late fees, interest, or NSF fees once payment is thirty (30) days past due. However, service may only be suspended after these minimum time periods and notice. City will not be responsible for or assist with the collection of delinquent accounts billed by Contractor. Contractor shall notify City Code Enforcement of suspended service. Upon recommencement of service following suspension, MFD and Commercial Customers shall be charged a Re-start Fee at the Rate set forth in Exhibit 1, as adjusted.

6.05 CUSTOMER SERVICE

6.05.1 General

All service inquiries and complaints shall be directed to the Contractor. A representative of the Contractor shall be available to receive the complaints during normal business hours. All service complaints will be handled by the Contractor in a prompt and efficient manner. In the case of a dispute between the Contractor and a Customer, the matter will be reviewed and a decision made by the Contract Administrator.

- Complaints related to missed Collections shall be addressed as provided in Sections 7.03.3 and 7.03.4. For those complaints related to repair or replacement of carts or bins, the appropriate Sections of this Contract shall apply.

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- Contractor agrees that it is in the best interest of the City that all Solid Waste, Recyclable Materials and Green Waste be collected on the scheduled Collection Day. Accordingly, missed Collections will normally be collected as set forth above regardless of the reason that the Collection was missed. In the event a Customer requests missed Collection Service more than two (2) times in any consecutive two (2) month period, the Contract Administrator will work with the Contractor to determine an appropriate resolution to that situation. In the event the Contractor believes any complaint to be without merit, Contractor shall notify the Contract Administrator, either by Fax or e-mail. The Contract Administrator will investigate all disputed complaints and render a decision.
- Contractor's service telephone number shall be accessible by a local (Oceanside) telephone number. The telephone number(s) shall be listed in the area's telephone directories under the Contractor's name in the White Pages and Yellow Pages. Contractor shall also provide a toll-free number.

6.05.2 Contractor's Office

The Contractor shall maintain an office where complaints can be received. Such office shall be equipped with sufficient telephones to meet the requirements of Section 6.05.7, shall have responsible persons in charge during Collection hours, and shall be open during such normal business hours, 8:00 a.m. to 5:00 p.m. Monday through Friday. The Contractor shall provide either a local or toll-free telephone number, and a telephone answering service or mechanical device to receive Customer inquiries during those times when the office is closed. Calls received after normal business hours shall be addressed the next Work Day morning.

6.05.3 Complaint Documentation

Service complaints received by City shall be directed to Contractor. Contractor shall keep logs of complaints forwarded to it for a minimum of three (3) years, which can be maintained electronically.

Contractor shall log all complaints received, including the date and time the complaint was received, the name, address and telephone number of the caller/complainant, a

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description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint. Log shall also include each instance that Solid Waste and/or Recyclables are not Collected and the form of notification used to inform the participants of the reasons of non-Collection and the end result or means of resolution of the incident.

All written Customer complaints and inquiries shall be date-stamped when received. All oral Customer complaints shall be recorded in a logbook. Receipt of all complaints, both written and oral shall be acknowledged to Customer within one (1) Work Day of receipt. Contractor shall use best efforts to resolve complaints within two (2) Work Days. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

All Customer service records and logs kept by Contractor shall be available to City upon request. City shall, at any time during regular office hours, have access to Contractor's customer service department for purposes that may include monitoring the quality of customer service or researching Customer complaints.

6.05.4 Resolution of Customer Complaints

Should Contractor and Customers not be able to resolve a complaint, not be able to establish a mutually acceptable Rate to be charged for services not included in Exhibit 1, or otherwise disagree, the matter shall be determined by the City, whose decision shall be final.

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

6.05.5 Emergency Contact

The Contractor shall provide the Contract Administrator with an emergency phone number where the Contractor can be reached outside of the required office hours. A live person, not voice-mail, shall be available at that number at all times, twenty-four (24) hours per day.

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6.05.6 Multilingual/TDD Service

Contractor shall at all times maintain the capability of responding to telephone calls in English and such other languages as City may direct. Contractor shall at all times maintain the capability of responding to telephone calls through Telecommunications Device for the Deaf (TDD) Services. Contractor shall be entitled to a rate adjustment to recover increased costs in the event that City directs that telephone service be provided in more than English and Spanish.

6.05.7 Customer Calls

During office hours, Contractor shall maintain a telephone answering system capable of accepting at least fifteen (15) incoming calls at one time. Contractor shall record all calls including any inquiries, service requests and complaints into a customer service log. All incoming calls will be answered within five (5) rings. Any call "on-hold" in excess of 1.5 minutes shall have the option to remain "on-hold" or to be switched to a message center where Customer can leave a message. Contractor's customer service representative shall return Customer calls. For all messages left before 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. For messages left after 3:00 p.m., all "call backs" shall be attempted a minimum of one time prior to noon the next Work Day. Contractor shall make a minimum of three (3) attempts within twenty-four (24) hours of the receipt of the call. If Contractor is unable to reach the Customer on the next Work Day, Contractor shall leave a voice message, and if no voice recording is available shall send a postcard to the Customer on the second Work Day after the call was received.

6.05.8 Contract Liaison

Contractor shall designate in writing a "Contract Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Contract-related issues. The Contractor must respond to all inquiries from the City within one (1) Work Day from the time of the inquiry. City shall be notified in advance of any change in Contract Liaison.

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6.05.9 Service Liaison

Contractor shall designate in writing a field supervisor as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer Service-related complaints. City shall be notified in advance of any change in Service Liaison.

6.06 PUBLIC OUTREACH AND EDUCATION SERVICES

Contractor, at their own expense, shall prepare, submit and implement an annual (Rate Year) Public Education and Outreach Program. The proposed action plan must be submitted annually for City approval prior to the commencement date for the first Rate Year and thereafter no later than each September 30 for each subsequent Rate Year. The program must include a minimum of four campaigns per Contract Year, designed to increase diversion and resident participation. Campaigns should target certain Recyclable Materials or "problem" areas of the Service Area where improvements can be maximized. Targets of outreach should be based on local trends and recycling patterns based on information obtained by both the Contract Administrator and Contractor staff.

6.06.1 Implementation and Ongoing Education Services

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at its expense, which will be distributed as indicated below. All brochures, mailings, and other educational materials are to be approved by City in advance of distribution.

- **Initial Mailing/Cart Options** – Contractor will prepare and mail (or be responsible for seeing that the City has mailed) an initial information packet to all Customers explaining the transition from the existing Solid Waste Handling Service program to the new program as defined by this Contract. The mailing will describe program changes, route changes, dates of program implementation, Recycling and diversion programs available, and other pertinent information.

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Contractor shall notify Cart Customers of the upcoming automation of Collection, and the distribution of Carts.

- **Instructional “How-to” Packets** – An information packet shall be provided to each Customer at the start of service under this Contract and to each new Customer throughout the Contract term. Contractor may attach these packets to the Carts upon initial Cart distribution. This packet shall: describe available services, including available Recycling and diversion programs; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide billing and customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or billing questions, and for Bulky Item Collection.

The packet should also clearly indicate what materials, such as Exempt Waste, Biohazardous Waste, and other Household Hazardous Wastes (HHW), should not be disposed of in these Containers. This brochure shall include instructions on how Customers should dispose of HHW.

- **Container Labels and Hot Stamps** – Recycling and Green Waste Containers shall carry stickers/labels and hot stamps as described in Section 7.06.1.4.
- **Annual Newsletter** Contractor shall prepare an annual brochure or newsletter within thirty (30) days after the Effective Date and thereafter once each Contract Year, promoting and explaining: all Solid Waste programs offered by City and Contractor (such as Recycling, Green Waste, Holiday Tree and Bulky Waste pick-ups) described in detail; the environmental, regulatory, and other benefits of participating in Recycling; how to properly dispose of Household Hazardous Waste, sharps waste, household Batteries etc.; Collection schedules, including holiday schedules; customers service

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numbers; and the procedures to begin and terminate services. The annual newsletter will be made available on Contractor's website, and Contractor will provide a link to the annual newsletter from the City's website. In addition, Contractor will print a limited number of annual newsletters, which will be made available to Customers on request, and for distribution at City facilities.

- **Corrective Action Notice** – Contractor shall develop a corrective action notification form for use in instances where a Customer sets out inappropriate materials for Collection that explains the appropriate manner for Disposal of such items.
- **Website** – Contractor shall develop and maintain a website with a page specific to the City, to enable City's Customers to contact Contractor and to display holiday schedules, proper HHW disposal procedures, which materials are to be placed in Recycling Containers and other useful information. Contractor will assist the City in establishing a link on the City's website to Contractor's page.

6.06.2 Contractor Representative

Contractor shall retain on its staff an individual who shall, as part of his or her job function, routinely visit civic groups, school assemblies, homeowners' associations, multi-family complexes and businesses, to promote and explain the Recycling and other programs Contractor offers, and participate in demonstrations and civic events.

6.06.3 Community Events

At the direction of the Contract Administrator, Contractor shall participate in and promote Recycling and other diversion techniques at community events and local activities. Such participation would normally include providing, without cost, educational and publicity information promoting the goals of City's Solid Waste program.

6.07 WASTE GENERATION/CHARACTERIZATION STUDIES

Contractor acknowledges that City must perform solid waste generation and disposal characterization studies periodically to comply with the requirements of the Act. Contractor agrees to participate and cooperate with City and its agents and to

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accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed, by Customer type (SFD, MFD, Commercial), to satisfy the requirements of the Act. Contractor will at its sole expense conduct such a waste generation and characterization study upon request of City, but not more than once every two years.

6.08 PROGRAMS AND SERVICES

Contractor shall provide additional services and programs, such as pilot programs, special studies, etc., as requested by City at a price to be mutually agreed upon between the Contractor and the Contract Administrator. In the event the Contractor and the Contract Administrator cannot reach a mutually agreed upon price for the requested service or program, City shall have the right to procure the service of other vendors or contractors to provide the requested service.

6.09 EMERGENCY SERVICES

In the event of a tornado, major storm, earthquake, tsunami, fire, natural disaster, or other such event, the Contract Administrator may grant the Contractor a variance from regular routes and schedules. As soon as practicable after such event, the Contractor shall advise the Contract Administrator when it is anticipated that normal routes and schedules can be resumed. The Contract Administrator shall make an effort through the local news media to inform the public when regular services may be resumed. The clean-up from some events may require that the Contractor hire additional equipment, employ additional personnel, or work existing personnel on overtime hours to clean debris resulting from the event. The Contractor shall receive additional compensation, above the normal compensation contained in this Contract, to cover the costs of rental equipment, additional personnel, overtime hours and other documented expenses based on the rates set forth in Exhibit 1 (as adjusted) to this Contract provided the Contractor has first secured written authorization and approval from the City through the Contract Administrator.

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ARTICLE 7. REQUIREMENTS FOR OPERATIONS, EQUIPMENT, AND PERSONNEL

7.01 COLLECTION HOURS AND SCHEDULES

7.01.1 Day and Time of Collection

To preserve peace and quiet, no solid waste may be collected between 8:00 P.M. and 5:00 A.M. in Commercial areas, or otherwise between 8:00 P.M. and 6:00 A.M. Contractor must adjust the early morning start point of collection routes to address and minimize service complaints when warranted and as practicable.

The Contract Administrator may waive the requirements of this section when necessitated by conditions beyond the control of the Contractor. The Contract Administrator may require the Contractor to change hours of operations in Residential or Commercial areas if disruption occurs.

7.01.2 Holiday Service

The City observes New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day as legal holidays. Contractor shall not be required to provide Collection Services or maintain office hours on the designated holidays. In any week in which one of these holidays falls on a Work Day, Residential Collection Services for the holiday and each Work Day thereafter will be delayed one Work Day for the remainder of the week with normally scheduled Friday Residential Collection Services being performed on Saturday. Any changes to the Holiday Service collection schedule may only be approved by the City.

7.02 COLLECTION ROUTES

On or before fifteen (15) days following the Effective Date, the Contractor shall provide for City approval maps precisely defining Collection routes, together with the days and the times at which Collection shall regularly commence. If the City has not approved or requested changes within fifteen (15) Work Days upon receipt of the service route maps, they shall be deemed as approved.

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7.02.1 Collection Routes Changes

The Contractor shall submit to the City, in writing, any proposed route change (including maps thereof) not less than sixty (60) days prior to the proposed date of implementation. The Contractor shall not implement any route changes without the prior review and approval of the Contract Administrator. The Contractor shall notify those Customers in writing of route changes not less than thirty (30) days before the proposed date of implementation. The Contractor shall be responsible for all costs associated with the changing of the street sweeping routes related to changes in the solid waste Collection routes.

7.02.2 Collection Route Audits

The City reserves the right to conduct audits of Contractor's Collection routes. The Contractor shall cooperate with the City in connection therewith, including permitting City employees or agents, designated by the Contract Administrator, to ride in the Collection vehicles in order to conduct the audits. The Contractor shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the Contract Administrator to conduct such audits.

The scope of the audit, and auditing party, will be determined by City and the scope may include, but is not limited to, Customer Service levels and Billing, Contractor Payments to City, Gross Receipts, tonnage, and verification of diversion rate.

If inaccuracies are found, City may expand the scope of the audit and recover additional audit costs from the Contractor.

7.02.3 Payments and Refunds

Should an audit disclose that payments payable by the Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of payments in accordance with Section 8.06 and/or refund to Contractor's Customers or to City, as directed by City, any overcharges within thirty (30) days following the date of the audit. Contractor shall pay interest to the City or Customer, as directed by City for any overcharge at an annual rate of ten percent (10%). Undercharges shall not be billed in arrears for more than ninety (90) days of

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service, with any remaining undercharges absorbed by Contractor. Overpayments to City shall be addressed as provided in Section 8.06.

7.03 COLLECTION STANDARDS

7.03.1 Implementation of Service

The Contractor's implementation of the services required by the Effective Date under this Contract shall occur in a smooth and seamless manner so that Customers and/or Generators do not experience disruption in Collection Services when services are initiated on the Commencement Date.

7.03.2 Servicing Containers

Contractor shall Collect the contents and return each Container to the location where the Occupant properly placed the Container for Collection. Contractor shall place the Containers upright with lids properly closed and secured. Contractor shall use due care when handling Containers. Contractor shall not throw, roughly handle, damage, or break Containers.

7.03.3 Missed Pick-Ups – SFD

When notified of a missed pick-up prior to 12:00 noon on a Work Day, Contractor shall collect the Solid Waste, Recyclable Materials, or Green Waste on the Work Day the notice is received. If notified after 12:00 noon on a Work Day, Contractor must collect the Solid Waste, Recyclable Materials, or Green Waste no later than the following Work Day.

7.03.4 Missed Pick-Ups – MFD & Commercial

When notified of a missed pick-up prior to 12:00 noon on a Work Day, the Contractor must collect the Solid Waste, Recyclable Materials, or Green Waste on the Work Day the notice is received, except in cases where access to containers is blocked on the Customer's property. If notified after 12:00 noon on a Work Day, Contractor must collect the Solid Waste, Recyclable Materials, or Green Waste no later than the following Work Day, except in cases where access to containers is blocked on the Customer's property.

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7.03.5 New Customer and Change in Service Levels

Contractor shall deliver Containers and initiate Collection services for a new Customer within five (5) Work Days of the Customer's request for service. If an existing Customer requests a change in the number or size of the Solid Waste, Recyclable Materials, or Green Waste Containers and/or frequency of Collection, the Contractor shall deliver additional Containers and/or remove Containers and shall initiate changes in the Collection Services within five (5) Work Days of the Customer's request for a change in service.

7.03.6 No Commingling of Solid Waste

Contractor shall separately collect and segregate Solid Waste, Recyclable Materials, and Green Waste from each other and shall not commingle these materials at any time without the express prior written authorization of the Contract Administrator.

7.03.7 Conditions of Service

Contractor shall collect all Solid Waste, Recycling, or Green Waste Bins or Carts that are readily accessible to the Contractor's crew and vehicles and not blocked, where the Carts have been placed curbside or other such location agreed to by the Contractor and Customer that will provide safe and efficient accessibility to the Contractor's Collection crew and vehicle.

Contractor shall not be required to Service

1. Containers with Recyclable Materials that have not been segregated from Solid Waste and Green Waste. As an alternative, at the direction of the Customer, Contractor may collect this material, and may charge a Contamination Fee to MFD Customers or Commercial Customers.
2. Containers with Green Waste that has not been segregated from Solid Waste and Recyclable Materials. As an alternative, at the direction of the Customer, Contractor may collect this material, and may charge a Contamination Fee to MFD Customers or Commercial Customers.
3. Carts that exceed the maximum load limit specified by the Cart Manufacturer.

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4. Any Commercial Solid Waste that is not placed in a Bin unless such Commercial Solid Waste is outside the Solid Waste Bin as a result of overflow.

7.03.8 Set-Out Instructions to Customers

Contractor shall instruct Customers as to any preparation of Solid Waste, Recyclable Materials, or Green Waste and the proper placement of Containers. If Customers are not adhering to Contractor's instructions, Contractor shall notify such Customers in writing.

7.03.9 Non-Collection

In cases of failure to comply with the instructions, Contractor may decline Collection Service provided that Contractor leaves a Non-Collection Notice on the Container, as determined by the City, indicating the reason for refusing to Collect the material. Such Notice shall also identify the steps Waste Generator must take to recommence Collection Service.

7.03.10 Non-Collection Notices

In the event of non-collection, Contractor shall affix to the Container a Non-Collection Notice explaining why Collection was not made. The Non-Collection Notice shall be affixed prominently onto the Container to ensure that it is not inadvertently removed due to weather conditions.

Contractor shall document Non-Collection Notices recording the date and time of issuance, address of Customer, reason for issuance, name of employee who issued the notice, and truck and route numbers. The Non-Collection Notice shall be at least two inches by six inches (2" x 6") in size. The Non-Collection Notice must identify the steps the Generator must take to recommence Collection Service.

Notwithstanding the above, with respect to SFD Customers using a 35-gallon Cart for Solid Waste, Contractor is entitled to deliver an appropriate change in Cart size and adjust the Rate accordingly where Non-Collection Notices have been issued for the reasons set forth in Section 7.03.7 (to the extent applicable) on three (3) or more occasions within any consecutive twelve (12) month period.

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7.03.11 Bin Overfilling

Where Contractor identifies instances of Bin overfilling at an MFD Customer, or Commercial Customer, Contractor shall document the overfilling through use of film or digital photography. Contractor will present evidence of the overfilling to both the Contract Administrator and the Customer, along with recommendations for changes in service levels to prevent overfilling. Contract Administrator will review the evidence, approve the Overage Fee charged to the Customer, and make the final determination of changes to service level. In the event Contractor cannot successfully contact Customer after three attempts, or cannot reach an agreement with Customer regarding a change in service, Contractor shall notify Contract Administrator, either by Fax or e-mail, of the details of the Solid Waste overfilling, and the attempts at communication with the Customer. The Contract Administrator shall respond to Contractor's report and make a final written determination and authorize delivery of either the next larger-sized Bin, or increase the Collection frequency and to adjust the Rate in effect for the determined service level.

7.03.12 Care of Private Property

Contractor's employees shall follow the regular walkway for pedestrians while on private property and shall neither trespass nor cross property to the adjoining premises unless the occupant or owner of both properties has given permission. Care should be taken to prevent damage to property, including flowers, shrubs, and other plantings. Contractor shall repair, to its previous condition, all damage to private or public property caused by its employees.

7.03.13 Spillage and Litter

The Contractor shall not litter premises and shall exercise all reasonable care and diligence in providing Collection Services so as to prevent spilling or dropping of Solid Waste. The Contractor shall not be responsible for cleaning up sanitary conditions caused by the carelessness of the Customer; however, the Contractor shall clean up any material or residue that are spilled or scattered by the Contractor or its employees.

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Contractor shall immediately, at the time of occurrence, clean up any spilled or dropped Solid Waste. Equipment oil, hydraulic fluids, spilled paint, or any other liquid or debris resulting from the Contractor's operations or equipment repair shall be covered immediately with an absorptive material and removed from the street surface. When necessary, Contractor shall apply a suitable cleaning agent to the street surface to provide adequate cleaning, and shall notify the Contract Administrator, and applicable Hazardous Materials Management Agencies within two (2) hours of such a spill or leak. Contractor shall meet or exceed for National Pollutant Discharge Elimination System (NPDES) permit requirements.

The above paragraphs notwithstanding, Contractor shall clean up any spillage or litter caused by Contractor within two (2) hours upon notice from the City.

7.03.14 Vehicles Equipped with Absorbent, Broom and Shovel

To facilitate such clean-up, Contractor's vehicles shall at all times carry sufficient quantities of petroleum absorbent materials along with a broom and shovel.

7.04 CONTRACTOR FACILITIES

Contractor shall provide all facilities needed for vehicle parking and maintenance, container storage and maintenance, employee parking, administration, billing, customer service, and other activities required to fulfill its obligations hereunder. Contractor shall own or lease the facilities; secure all permits needed to conduct its operations; design, finance, and complete any site improvements; maintain the facilities; and make any other arrangements necessary to fulfill its obligations required by this Contract.

7.05 VEHICLES

Contractor is responsible for providing all vehicles that may be required for the Collection of Solid Waste that are sufficient in number and capacity to efficiently perform the work required by this Contract in strict accordance with its terms. Contractor is expressly obligated to provide such Collection vehicles and routes as are required to meet the service standards set forth herein. Contractor shall have available on Work Days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

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7.05.1 Specifications

1. The Collection vehicles shall be designed and operated so as to prevent Collected materials from escaping from the vehicles. Hoppers shall be closed on top and on all sides with screening material to prevent Collected materials from leaking, blowing or falling from the vehicles. All Collection vehicles and Containers shall be watertight and shall be operated so that liquids do not spill during Collection or in transit.
2. At all times during the term of this Contract, Contractor's Collection Vehicles shall comply with San Diego Air Pollution Control District and the California Air Resource Board's emission standards as they may be approved for Solid Waste Collection vehicles, as well as other Federal, State and local laws and regulations that may be enacted during the term of this Contract. Subject to Section 5.09, Contractor shall provide Collection Services using alternative clean-air (CNG) Collection vehicles in accordance with the following schedule (except that Contractor may utilize diesel-powered Collection vehicles as spares): (i) for Collection vehicles providing Collection of Recyclable Materials at SFDs, on or before April 1, 2012; (ii) for Collection vehicles providing Collection of Solid Waste at SFDs, on or before October 1, 2012; and (iii) for all other Collection vehicles, on or before October 1, 2013.
3. All Collection vehicles under this Contract, except those vehicles used solely on Contractor's premises, are to be registered with the California Department of Motor Vehicles.
4. All Collection vehicles must comply with U.S. EPA noise emission regulations, currently codified at 40 CFR Part 205, and other applicable state noise control regulations.

7.05.2 Vehicle Identification

Collection vehicles shall be marked with Contractor's name, toll-free number, and the number of the vehicle painted in letters of contrasting color, at least three (3) inches high, on each side and the rear of each vehicle.

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7.05.3 Vehicle Cleaning

All Collection vehicles shall be washed at least once each week. Collection vehicles shall be thoroughly washed and thoroughly steam cleaned on a regular basis so as to present a clean appearance. City may inspect Collection vehicles at any time to determine compliance with this Contract. Contractor agrees to replace or repair to the City's satisfaction, any Collection vehicle which City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

7.05.4 Vehicle Maintenance

Contractor shall inspect each Collection vehicle daily to ensure that all equipment is operating properly. Collection vehicles, which are not operating properly, shall be removed from service until repaired and operating properly. Contractor shall perform all scheduled maintenance functions upon Collection vehicles in accordance with the manufacturer's specifications and schedule.

Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. Contractor shall maintain accurate records of repair, which shall include the date, nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

Contractor shall keep accurate records of all Collection vehicle maintenance and shall make such records available to City upon request. The log shall at all times be accessible to City by physical inspection upon request of Contract Administrator, and shall show, at a minimum, each Collection vehicle's Contractor-assigned identification number, date purchased or initial lease, dates of performance of routine maintenance, dates of performance of any additional maintenance, and description of additional maintenance performed.

7.05.5 Painting

Beginning January 1, 2013, Contractor shall repaint all Collection vehicles (including vehicle's striping) during the term of this Contract on a frequency as necessary to

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maintain a positive public image as reasonably determined by the Contract Administrator.

Beginning January 1, 2013, Contractor shall repaint any or all Collection vehicles within thirty (30) days' notice from City, if City determines that their appearance warrants painting.

Collection vehicles shall be painted in a standard color.

7.05.6 Vehicle Operation

Collection vehicles shall be operated in compliance with Federal, State and local laws and regulations including, but not limited to, the California Vehicle Code, the regulations of the California Air Resources Board (CARB) Waste Collection Vehicle Regulations as established in the California Code of Regulations Title 13 Section 2700 et seq., and all applicable safety and local ordinances. Contractor shall not load Collection vehicles in excess of the manufacturer's recommendations or limitations imposed by Federal, State, or local weight restrictions on vehicles or roads.

7.05.7 Vehicle Certification

For each Collection vehicle used in the performance of services under this Contract, Contractor shall obtain a certificate of compliance (smog check) issued pursuant to Part 5 of Division 26 of the California Health and Safety Code (Section 43000 et seq.) and regulations promulgated thereunder and/or a safety compliance report issued pursuant to Division 14.8 of the California Vehicle Code (Section 34500 et seq.) and the regulations promulgated thereunder, as applicable to the vehicle. Contractor shall maintain copies of such certificates and reports and shall make such certificates and reports available for inspection upon request by the Contract Administrator.

7.05.8 Vehicle Inspections

Upon City request, Contractor shall submit the Safety Compliance Report/Terminal Record Update from its Biennial Inspection of Terminal, or BIT. If Contractor receives a terminal rating below satisfactory, Contractor shall notify the City, and Contractor is in violation of the Contract. Contractor has the time allowed by the Department of California Highway Patrol ("CHP") to cure violations and bring the terminal rating up to

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satisfactory. If the CHP does not adjust the rating to satisfactory or better within six (6) months, then the Contractor shall be considered in default of the contract and the City may terminate this Contract.

The City may cause any Collection vehicle used in the performance of this Contract 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 all applicable provisions of the State Vehicle Code. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City may be returned to service until its return to service has been approved by the City.

7.05.9 Correction of Defects

Following any inspection, the Contract Administrator has the right to cause the Collector, at its sole expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary, or unsightly. The Contract Administrator's determination may be appealed to the City Manager, which decision will be final.

7.06 CONTAINERS

7.06.1 Carts

Purchase and Initial Distribution of Carts; Additional Carts

Each SFD Customer will be provided one (1) 96-gallon Solid Waste Cart, one (1) 96-gallon Recycling Cart, and one (1) 96-gallon Green Waste Cart as the default service. Beginning Ninety (90) days following initial delivery of the Contractor-provided Solid Waste Cart and for a ninety day (90) period thereafter, each Customers may request to substitute ninety-six (96) gallon Carts with sixty-four (64) gallon Carts, on one (1) occasion at no additional charge. No discount will be given for use of sixty-four (64) gallon carts.

Customers may request additional Carts for Solid Waste, Recyclable Materials or Green Waste Collection Service, as provided in Article 4. Customers may also be provided with a 35-gallon Solid Waste Cart upon qualification as a small quantity generator, as provided in Section 4.02.1. Commercial Customers receiving Cart

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Service will be provided with an appropriate-sized Cart as agreed to between Customer and Contractor.

The Contractor shall be responsible for the purchase and distribution of fully assembled and functional Carts to Customers in the Service Area. All Carts provided by Contractor utilized in the performance of this Contract shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below.

All Carts selected shall be subject to City's approval. Carts must meet color, size, uniformity and quality requirements of the City. The City will not permit Carts with inconsistent colors or in poor condition to be used in the City at any time during the term of this Contract, and may require Contractor to replace such Carts.

Cart Capacity

The references to Cart sizes in this Contract of 96, 64 and 35 gallons may be approximate. The Cart size may fall within the following range:

- 30 – 38 gallons
- 60 – 70 gallons
- 90 – 101 gallons

The selected sizes must be consistent throughout the City for a uniform appearance.

Cart Load Capacity

Depending on the capacity, the Carts must have a minimum load capacity as noted below without container distortion, damage, or reduction in maneuverability or any other required functions:

Carts Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130
30-38	70

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Cart Durability

Each Cart must remain durable, and must, at minimum, meet the following durability requirements to satisfy its intended use and performance for the term of this Contract:

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

Chemical Resistant

Carts must be resistant to damage from common household or residential products and chemicals. Carts must also be resistant to damage from human and animal urine and feces.

Stability and Maneuverability

The Carts must be stable and self-balancing in the upright position, when either empty or loaded to their maximum design capacity with an evenly distributed load, and with the lid in either a closed or open position. The Carts must be capable of maintaining their upright position in sustained or gusting winds of up to 25 miles per hour from any direction. The Carts must be capable of being easily moved and maneuvered, with an

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evenly distributed load equal in weight to their maximum design capacity on a level, sloped or stepped surface.

Cart Handles

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

Cart Lid

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

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

Cart Color and Appearance

The Solid Waste, Recycling and Green Waste Carts will be differentiated by the color of the Cart. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container. Solid Waste Carts will be gray, Recycling Carts will be blue, and Green Waste Carts will be green. Cart colors shall be consistent throughout City.

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Cart Labeling and Hot Stamping

Labels used on Carts shall be placed on the inside of the Cart lid, and hot stamps shall be on the top of the lid and/or on the body of the Cart. Labels shall be replaced when worn. Cart labels and hot stamps will include specific instruction on what materials should and should not be placed in each Cart.

Replacement of Carts

Contractor's employees shall take care to prevent damage to carts by unnecessary rough treatment. Any Cart damaged by the Contractor shall be replaced by the Contractor, at the Contractor's expense, within five (5) Work Days at no cost or inconvenience to the Customer.

Upon notification to the Contractor by the City or a Customer that the Customer's Solid Waste, Recycling, or Green Waste Cart(s) has been stolen or damaged beyond repair, the Contractor shall deliver a replacement Cart(s) to such Customer within five (5) Work Days at no additional cost unless Contractor can demonstrate to the Contract Administrator beyond a reasonable doubt that the damage or loss was due exclusively to the Customer's intentional or negligent behavior. The Contract Administrator shall make the final determination. All repairs must restore the Cart to its full functionality. Unsightly/worn-out Carts shall be replaced by Contractor upon Customer request. The Contractor shall maintain records documenting all Cart replacements occurring on a monthly basis.

Contractor shall be responsible for graffiti removal within two (2) Work Days at no additional charge to the Customer or to City.

In addition to the initial Cart substitution program provided above at the time of initial delivery of Carts, and in addition to the initial delivery of a thirty-five (35) gallon Solid Waste Cart to qualifying small quantity generator Customers, each Customer shall be entitled to the replacement of one (1) Solid Waste Cart, one (1) Recycling Cart, and one (1) Green Waste Cart for any reason other than theft or damage on one (1) occasion during the life of this Contract at no cost to the Customer, unless caused by the fault of the Customer. Except in the case of a Cart that must be replaced because of damage caused by Contractor or in the case where Contractor elects to replace a Cart rather

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than repair it on-site, Contractor shall be compensated for the cost of those replacements in excess of one (1) per type of Cart per Customer during the life of the Contract, in accordance with the Cart Delivery Service Rate set forth in Exhibit 1, as adjusted.

Contractor understands and agrees that this provision is intended to be applied on a per-Cart-type basis and accordingly each Customer could receive up to three (3) replacement Carts, one (1) of each type, during the term of the Contract.

Repair of Carts

Contractor shall be responsible for repair of Carts including but not limited to, hinged lids, wheels and axles, unless caused by the fault of the Customer. Within five (5) Work Days of notification by the City or a Customer of the need for such repairs, the Contractor shall repair the Cart or, if necessary, remove the cart for repairs and deliver a replacement cart to the Customer.

Cart Delivery, Removal or Exchange

Upon notification to the Contractor by the City or a Customer requesting delivery, removal or exchange of Cart(s), the Contractor shall complete such request within five (5) Work Days.

Ownership of Solid Waste, Recycling and Green Waste Carts

Ownership of Solid Waste, Recycling, and Green Waste Carts shall rest with the Contractor. The City may direct Contractor to remove and dispose of the Carts at the end of the Contract at no additional charge.

Collection of Customers' Discarded Collection Containers

The Contractor shall collect used, discarded, or unwanted Solid Waste collection containers used by SFD as part of the initial delivery of Contractor-provided Carts, at no cost. To the extent feasible, Contractor shall recycle, or cause to have recycled the used, discarded, or unwanted collection containers.

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7.06.2 Bins, Roll-off Boxes and Compactors

Purchase and Distribution of Containers

The Contractor shall be responsible for the purchase and distribution of Containers such as Bins, Roll-Off Boxes and Compactors to all MFD and Commercial Customers in the Service Area (except Commercial Customers receiving Cart Service).

Contractor shall also distribute Containers to new MFD and Commercial Customers that are added to the Service Area during the term of this Contract. Containers to be distributed shall be completed within five (5) Work Days of receipt of the request by the MFD or Commercial Customer.

Replacement of Containers

Care shall be taken by Contractor's employees to prevent damage to Containers by unnecessary rough treatment. Any Container damaged by the Contractor shall be replaced by the Contractor, at the Contractor's expense, within five (5) Work Days at no cost or inconvenience to the Customer.

Repair of Containers

Contractor shall be responsible for repair of Containers at no additional charge, unless caused by the fault of the Customer. Within five (5) Work Days of notification by the City or a Customer of the need for such repairs, the Contractor shall repair the Container or if necessary, remove the Container for repairs and deliver a replacement Container to the Customer. Container repair shall also include the removal of graffiti from the Container within two (2) Work Days following receipt of notice from the Customer or the Contract Administrator.

Container Exchange

Upon notification to the Contractor by the City or a Customer that a change in the size or number of the Containers is required, the Contractor shall deliver such different-sized or number of Containers to such Customer within five (5) Work Days.

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Ownership of Containers

Ownership of Bins, Roll-Offs of Compactors distributed by the Contractor shall rest with the Contractor. The City may direct Contractor to remove and dispose of the Containers at the end of the Contract at no additional charge.

Annual Cleaning

Once each Contract Year as needed to maintain a neat appearance and prevent nuisance conditions, at no charge to the Commercial Customer, Contractor shall clean all Containers at a Commercial Premises or shall replace the dirty Containers with clean Containers and remove the dirty Containers for cleaning.

Bin Enclosure Cleanout

Contractor is responsible for cleaning out Customers' overflowing Bins and enclosures within twenty-four (24) hours of notification by City. Contractor may follow the procedures in Section 7.03.11 to address overfilling of Containers.

Container Signage, Painting, and Cleaning

All metal Containers of any service type furnished by the Contractor shall be either painted or galvanized. Recycling Bins shall include a blue-colored label identifying the types of material to be placed in the Bin. All Containers shall display the Contractor's name and Contractor's customer service telephone number, and shall be kept in a clean and sanitary condition. Such Containers as are provided by the Contractor shall be steam cleaned by the Contractor as frequently as necessary so as to maintain them in a sanitary condition. Containers will be subject to periodic, unscheduled inspections by the City and determination as to sanitary condition shall be made by the City.

7.07 PERSONNEL REQUIREMENTS

The Contractor shall employ and assign qualified personnel to perform all services set forth herein. The Contractor shall be responsible for ensuring that its employees comply with all applicable laws and regulations and meet all federal, state and local requirements related to their employment and position.

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- The City may request the transfer of any employee of the Contractor who materially violates any provision hereof, or who is wanton, negligent, or discourteous in the performance of his duties.
- Contractor's field operations personnel shall be required to wear a clean uniform shirt bearing the Contractor's name. Contractor's employees, who normally come into direct contact with the public, including drivers, shall bear some means of individual photographic identification such as a name tag or identification card.
- Each driver of a Collection vehicle shall at all times carry a valid California driver license and all other required licenses for the type of vehicle that is being operated.
- Each driver of a Collection vehicle shall be proficient in written and spoken English.
- Each driver of a Collection vehicle shall at all times comply with all applicable state and federal laws, regulations and requirements.
- Contractor's employees, officers, and agents shall at no time be allowed to identify themselves or in any way represent themselves as being employees of the City.
- The Contractor's name and the Customer Service telephone number shall be properly displayed on all Collection vehicles.

7.08 PERFORMANCE REVIEW MEETING

Contractor acknowledges and agrees that one of City's primary goals in entering into this Contract is to ensure that the Collection Services are of the highest caliber, that Customer satisfaction remains at the highest level, that maximum diversion levels are achieved, and that materials collected are put to the highest and best use to the extent possible.

City may hold a meeting annually to review Contractor's Solid Waste Collection efforts, source reduction, processing and other diversion services and overall performance under this Contract. The purpose of the Performance Review Meeting is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy, and in full compliance with the terms of

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this Contract. Topics for discussion and review at the Solid Waste Services and Performance Review Meeting shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Contract, developments in the law, new initiatives for meeting or exceeding the Act's mandates, regulatory constraints, results of route audits, and Contractor performance. City and Contractor may each select additional topics for discussion at any Performance Review Meeting.

City shall notify Contractor of its intent to hold a Performance Review Meeting at least sixty (60) days in advance thereof. Thirty (30) days after receiving notice from City of a Performance Review Meeting, Contractor shall submit a report to City which may contain such information as it wishes to have considered, and shall contain the following:

- a) Current diversion rates and a report on Contractor's outreach activities for the past year.
- b) Recommended changes and/or new services to improve City's ability to meet the goals of the Act and to contain costs and minimize impacts on rates. A specific plan for the Act compliance shall be included.
- c) Any specific plans for provision for new or changed services by Contractor.
- d) Customer complaint records. The reports required by this Contract regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Meeting. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Meeting, and any Customer may submit comments or complaints before or during the Meeting, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Meeting.

As a result of its findings following any Solid Waste Services and Performance Review Meeting, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance

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inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Solid Waste Services and Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 14.07.2.

ARTICLE 8. PAYMENTS TO THE CITY

In addition to any other consideration set forth herein, as part of its consideration for entering into this Contract, and for the exclusive right and privilege to provide Solid Waste Services as specified herein, Contractor shall provide the following:

8.01 PAYMENT SCHEDULE

Remittance of the payments set forth in this Article 8 shall be due on the dates specified in Sections 8.02, 8.03 and 8.05. If the payment is not submitted on or before the specified date, the Contractor must pay to the City a service charge, in an amount equal to ten percent (10%) of the amount owing for the payment period. The Contractor must pay an additional ten percent (10%) service charge on any unpaid balance for each additional thirty-day period during which the Collector Payment remains unpaid. Late payment service charges will not be included in any revenue requirement. The Contractor agrees that the service charges required by this Section 8.01 reasonably reflect the cost to the City to process all delinquency calculations and notices, and to monitor the Contractor's services.

8.02 COLLECTOR PAYMENT

The Collector Payment shall be a percentage of Contractor's Gross Receipts collected each month for all Residential, Commercial, and Roll-off Services provided in the City under the terms of this Contract, with a minimum amount of \$1,700,000.00 for each Rate Year, prorated for any Rate Year with a duration of less than twelve (12) months. Revenue received by the Contractor from the sale of Recyclable Materials, including California Redemption Value, shall not be considered as Gross Receipts for purposes of

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the calculation of Collector Payment. For Collection Services, the Collector Payment percentage shall be nine percent (9%) percent of Gross Receipts. For the first Rate Year (prorated for two quarters), commencing January 1, 2011, and for the first two quarters of the second Rate Year, commencing July 1, 2011 and October 1, 2011, Contractor shall pay the minimum amount of \$1,700,000.00 on or before January 31, 2011. Thereafter, Contractor shall pay the minimum amount in four (4) installments of \$425,000.00 each on or before September 30, December 31, March 31 and June 30 of each Rate Year, commencing with payment on March 31, 2012 for the third quarter of the second Rate Year. Beginning with the September 30, 2012 quarterly payment and each September 30 thereafter during the Term, Contractor will calculate the amount of the Collector Payment based on nine percent (9%) of Gross Receipts for the prior Rate Year or Rate Years (prorated if required), as the case may be, and shall pay the first installment of \$425,000.00 plus the difference, if any, between the calculated Collector Payment and the amount paid during the prior Rate Year or Rate Years, if the calculated Collector Payment exceeds \$1,700,000.00 (prorated if required). Contractor will then pay three (3) installments of \$425,000.00 each for the remainder of the Rate Year. If the Collector Payment from the prior Rate Year or Rate Years based on nine percent (9%) of Gross Receipts is less than \$1,700,000.00 (prorated if required) for any Rate Year, Contractor shall pay the four (4) installments of \$425,000.00 each, and is not entitled to any reduction in the amount of the installment payments.

8.03 CURBSIDE PROGRAM REBATE SHARING PAYMENT

With respect to each Contract Year commencing on January 1, 2011, Contractor shall pay the Curbside Program Rebate Sharing Payment, which is the amount by which the annual curbside program revenue sharing payment received from CalRecycle pursuant to the California Beverage Container Recycling & Litter Reduction Act for each Contract Year exceeds \$80,000.00 for CRV Materials Collected by Contractor in the City. Payment to the City is due forty-five (45) days following Contractor's receipt of the rebate payment from CalRecycle. The amount of the Payment will be prorated for any Contract Year during the Term that is less than twelve (12) months.

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8.04 CONTRACT AWARD PAYMENT

The Contractor shall make a one-time, lump sum payment of one million dollars (\$1,000,000.00) within fifteen (15) Work Days of the Effective Date.

8.05 OTHER PAYMENTS

The City reserves the right to establish other payments or increase the amount of existing payments, as it deems reasonably necessary. The amount, time, and method of payment and the applicable adjustment process will be established by the City, and the Contractor shall be entitled to a rate adjustment in accordance with Section 14.07.1.

8.06 ACCEPTANCE OF PAYMENT BY CITY

No acceptance by City of any payment shall be construed as an accord that the amount is the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Contractor for any additional sums payable under the provisions of this Contract. All amounts paid shall be subject to independent audit and recompilation by City. If, after the audit, such recompilation indicates an underpayment of more than one-half percent (0.5%) of the amounts as specified in Section 8.01, Contractor shall pay to City the amount of the underpayment within ten (10) days of receipt of written notice from City that such is the case. If, after the audit, such recompilation indicated an underpayment, Contractor shall reimburse City for all reasonable costs and expenses incurred in connection with the audit and recompilation, within ten (10) days of receipt of written notice from City that such is the case. Contractor shall also pay interest to the City for any underpayment at an annual rate of ten percent (10%). If, after audit, such recompilation indicates an overpayment, City shall notify the Contractor in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recompilation. Contractor may offset the amounts next due following receipt of such notice by the amount specified therein.

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ARTICLE 9. CHARGES AND RATES

9.01 GENERAL

The service rates as established in Exhibit 1 which is attached hereto and included in this Contract and as may be adjusted under the terms of this Contract shall be the Maximum Contractor Compensation. Contractor may receive no other compensation unless approved in advance in writing by the City, or as otherwise provided in this Contract.

Contractor shall not charge for Collection Services provided to City Facilities as included in Exhibit 4.

9.02 INITIAL RATES

The Maximum Contractor Compensation through the Rate Year ending June 30, 2012, shall not exceed the maximum rates set forth in Exhibit 1.

9.03 SCHEDULE OF FUTURE ADJUSTMENTS

Beginning with the Rate Year starting July 1, 2012 and for all subsequent Rate Years, Contractor may request an annual adjustment to the Maximum Contractor Compensation shown in Exhibit 1. The Contractor shall submit its request in writing directly to City staff or via certified mail, on or before April 15, 2012 and April 15 of each succeeding Rate Year, and shall be based on the method of adjustment described in 9.04. Failure to submit a written request by April 15 of each year shall result Contractor waiving the right to request such an increase for the subsequent Rate Year.. Missed rate adjustments may not be added to rate adjustment applications in ensuing years. City may decrease the Maximum Contractor Compensation in accordance with Section 9.04 if the Consumer Price Index decreases.

9.04 METHOD OF ADJUSTMENTS

Contractor or City may request an annual adjustment to the Maximum Contractor Compensation according to the method described in this section and the formulas shown in Exhibit 2, subject to review and approval of City. All future adjustments are to

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be effective July 1, will apply to each component of the Rates set forth in Exhibit 1, and will be based on the Rates in Exhibit 1, as adjusted.

9.04.1 Rate Adjustment Indexes

Maximum Contractor Compensation adjustments will be based on the change in Consumer Price Index – All Urban Consumers, U.S. City Average All Items (CUUR0000SAO) weighted at 100% or the Consumer Price Index – All Urban Consumers, San Diego All Items (CUURA424SAO) weighted at 75%, whichever produces the highest percentage change.

9.04.2 Rate Adjustment Method

Step One – Calculate the percentage increase or decrease in the Consumer Price Index (CPI-U), U.S. Average and the Consumer Price Index (CPI-U), San Diego, CA. Apply a 100% weight to the CPI-I, U.S. Average and a 75% weight to the CPI-U, San Diego, CA CPI. Select the CPI change that produces the highest change. The initial indexes will be based on CPI's for December 31, 2011. New Indexes will be for the annual period ending December 31 prior to the rate year anniversary date.

Step Two – Multiply the CPI percentage change to the existing Maximum Contractor Compensation to calculate the rate change. Add the change to the existing Maximum Contractor Compensation to determine the newly adjusted Maximum Contractor Compensation for the next rate year.

9.05 EXTRAORDINARY ADJUSTMENT

Contractor may petition the City in writing at reasonable times other than that allowed under Section 9.04 for an adjustment in the Maximum Contractor Compensation in the event of extraordinary changes in the costs of operations or programs that satisfy all of the following conditions: (i) materially alters Contractor's operations or overall costs; (ii) could not reasonably have been foreseen by a prudent operator; and (iii) by all reasonable expectations will continue for a period of at least six (6) months. The Contractor may request only one such adjustment per Rate Year. Without limitation, examples of extraordinary changes that would justify a request for an adjustment include the inability to utilize a particular Disposal Site or processing facility, or

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substantial increases in the cost of fuel or other required commodities arising from terrorist activities, wartime conditions, the loss of global energy resources, or catastrophic natural events.

Such changes shall not include changes in the market value of Recyclables or inaccurate estimates by the Contractor of its cost of operations. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively.

Contractor's request shall contain substantial proof and justification to support the need for the adjustment. For each request brought pursuant to this section, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate.

The City may request from the Contractor such further information as it deems necessary to fully evaluate the request and make its determination. City may request a copy of the Contractor's annual financial statements in connection with the City's review of Contractor's rate adjustment request. City is entitled to a reimbursement of its costs in reviewing a request for an extraordinary adjustment. City shall review the Contractor's request and, in City's reasonable judgment, 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.

ARTICLE 10. RECORD KEEPING AND REPORTING REQUIREMENTS

10.01 GENERAL

Contractor shall compile and maintain records related to its performance under this Contract as necessary to develop the reports required by this Contract. Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with and to meet the reporting and Solid Waste program management needs of the City, the Act, other Applicable Laws, and the requirements of this Contract.

Record keeping and reporting requirements specified in this Contract shall not be considered limiting or necessarily complete. In particular, Article 10 is intended to

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highlight the general nature of records and reports and their minimum content and is not meant to comprehensively define the scope and content of the records and reports. Upon written direction or approval of City, the records and reports required by Contractor in accordance with this and other Articles of the Contract shall be adjusted in number, format, or frequency.

Contractor shall maintain all records necessary to allow the City to determine Contractor's compliance with the terms of the Contract and compliance with the performance standards presented in this Contract. The records shall be maintained in a manner that allows for easy verification of Contractor's performance.

10.02 RECORD KEEPING

10.02.1 General

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City. All records shall be maintained for five (5) years after the expiration or early termination of this Contract.

10.02.2 Inspection of Records

City shall have the right to inspect or review specific documents or records of Contractor or Affiliates that City shall deem, in its reasonable judgment, necessary to evaluate annual reports, compensation applications provided for in this Contract, and Contractor's performance provided for in this Contract.

Contractor agrees that the relevant records of any Affiliates conducting operations addressed in the Contract shall be provided or made available to City and its official representatives for review. The City, its auditors and other agents selected by the City, shall have the right, during regular business hours, to conduct unannounced on-site inspections and review of the records and accounting systems of Contractor and to make copies of any documents required for the above reviews.

10.02.3 Retention of Records

Unless otherwise herein required, Contractor shall retain all records and data required to be maintained by this Contract for the term of this Contract plus at least five (5) years after expiration or early termination of the Contract. Records and data shall be in a

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chronological and organized form and readily and easily interpreted. At the City's request, records and data required to be retained shall be retrieved in a timely manner (which shall not exceed more than ten (10) Work Days unless Contractor obtains prior written approval from the City) by Contractor and made available to the City.

Contractor shall maintain copies of all Billings and Billing collections (e.g., Customer payments) records or copies of Billing summary reports (that document all Billings and Billing Collections for each Customer) for five (5) years, following the date of Billings, for inspection and verification by City.

Records and data required to be maintained that are not specifically directed to be retained that are, in the reasonable judgment of the City, material to the determination of Contractor's compensation or rates or to determine Contractor's performance under this Contract, shall be retrieved by Contractor and made available to the City in a timely manner (which shall not exceed ten (10) Work Days unless Contractor obtains prior written approval from the City). When records and data are not retained or provided by the Contractor, the City may make reasonable assumptions regarding what information is contained in such records and data, and such assumption(s) shall be conclusive in whatever action the City takes.

10.02.4 Record Security

Contractor shall maintain adequate record security to preserve records from events that can be reasonably anticipated such as a fire, theft, and an earthquake. Electronically-maintained data and/or records shall be protected, backed up, and stored at a separate site from the original data.

10.02.5 Accounting Records

Contractor shall maintain full, complete and separate financial, statistical and accounting records, pertaining to cash, billing, and provisions of all Collection Services, prepared on an accrual basis in accordance with generally accepted accounting principles. Billing, gross receipt, rebate and disposal records only shall be subject to audit, copy, and inspection. Contractor shall maintain and preserve all billing, gross

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receipts, rebate and disposal records for a period of not less than five (5) years following the close of each of the Contractor's fiscal years.

10.02.6 Collection Service Records

Contractor shall maintain and retain records relating to:

1. Customer and Billing information including, but not limited to, the following for each Customer:
 - a) Names, addresses, and phone numbers of Customer, billing contact person, and, if appropriate, for property manager or on-site contact person;
 - b) Solid Waste service level, Recyclable Materials service level, and Organic Materials service level (where service level includes the number of Containers, size of each Container, and the Collection frequency of each Container);
 - c) Number of tenant or living units at MFD Complexes;
 - d) Service exemptions for SFD Premises (if applicable);
 - e) Special services (e.g., Roll-out Service, Scout Service, lock/unlock charges, etc.);
 - f) Contractor's Customer and Billing system shall allow for information to be compiled easily and separately for each service sector.
2. Quantities of Residential Solid Waste and Commercial Solid Waste by type (e.g., Solid Waste, Recyclable Materials, Green Waste) collected, purchased, processed, sold, donated or given for no compensation, and residue disposed.
3. Route sheets and route maps identifying the accounts serviced by each Collection vehicle on a daily basis.
4. Facilities, equipment and personnel used.
5. Facilities and equipment operations, maintenance and repair.
6. Tonnage of Solid Waste, Recyclable Materials, and Green Waste listed separately by materials type and service sector and the facility where materials were delivered.

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7. Monthly overall diversion level, monthly SFD diversion level, and the monthly Commercial diversion level (each stated as a percentage) and calculated in accordance with Attachment I.
8. Recyclable Materials, Household Batteries, Cell Phones and Green Waste Collection participation and set-out rates.
9. Tonnage of materials Collected from on-call Bulky and community drop-off events as described in Section 4.05 reported separately by material type collected and listing facilities where materials were delivered (e.g., Goodwill Industries, Transfer Station and Processing Site, etc.).

10.02.7 Other Records

Contractor shall maintain all other records reasonably related to provision of Collection Services, whether or not specified in this the Contract.

10.02.8 Customer Service Records

Daily logs of all Complaints and Inquiries provided under this Contract shall be retained for a minimum of thirty-six (36) months. Contractor shall maintain and retain customer service center records, which include, but are not limited to the following customer service center statistics.

1. Number of calls received on a daily and monthly basis;
2. Number of calls answered on a daily and monthly basis;
3. Number of abandoned (dropped) calls on a daily and monthly basis;
4. Average abandoned time (i.e., hold time before abandoning call);
5. Number of delayed calls (i.e., calls where caller is placed on hold before speaking with a Customer Service Agent) on a daily and monthly basis;
6. Average hold time for incoming calls on a daily and monthly basis;
7. Percentage of calls answered by a person within thirty (30) seconds on a daily and monthly basis;
8. Percentage of calls answered within three (3) minutes on a daily and monthly basis;

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9. Number of e-mail responses sent from the Customer Service Department to Customers on a monthly basis;
10. Number and percentage of Complaint and inquiry e-mails or submissions through Contractor website that received responses before close of business on the day received on a monthly basis;
11. Number and percentage of Complaint and inquiry e-mails that received responses by the close of business on the day following the receipt of the Complaint or Inquiry;
12. Number of Complaints and Inquiries received through Contractor's website on a daily and monthly basis;
13. Minimum, average, and maximum number of Customer Service Representatives employed during each month; and,
14. Number of Customer Service Representatives employed during each month.

10.03 ANNUAL REPORTING

10.03.1 General

Except as otherwise provided, annual reports shall be submitted no later than April 1 for the previous Contract Year. Annual reports shall be submitted in hard copy, and shall be provided electronically in software acceptable to the City.

10.03.2 CalRecycle Reports

Contractor shall assist the City to prepare the Annual Diversion Report required by CalRecycle by providing necessary information.

10.03.3 City Reports

Annual reports to the City shall include:

- Contractor shall prepare a report that summarizes the public education and information activities undertaken during the year, including distribution of bill inserts, collection notification tags, community information and events, tours and other activities related to the provision of Collection Services. This report shall detail the impact of these activities.

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- Contractor shall prepare a report that summarizes Solid Waste, Recyclable Materials and Green Waste Collection, to include amounts collected, participation, setouts, contamination, etc. from SFD, MFD and Commercial programs.
- Contractor shall prepare a report that describes efforts to identify new or enhanced diversion programs to assist City to meet its goal of 75% diversion, and recommendations for implementation.
- By July 1 of each year, Contractor shall prepare and submit the Household Hazardous Waste information required on state Form 303.

10.03.4 Additional Reporting

The Contractor shall furnish the City with any additional reports as may reasonably be required, such reports to be prepared within a reasonable time following the reporting period, subject to the provisions of Section 14.07.

- Contractor shall maintain any and all letters, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to Customers for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor or pursuant to this Contract.
- Contractor shall maintain all documents and records, which demonstrate performance under this Contract for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Contract.
- Any records or documents required to be maintained pursuant to this Contract shall be made available for inspection or audit in accordance with Section 10.02.2, at any time during regular business hours, upon written request by the Contract Administrator, the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at Contractor's address indicated for receipt of notices in this Contract.

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ARTICLE 11. INSURANCE

11.01 INSURANCE POLICIES

Contractor shall secure and maintain throughout the term of this Contract insurance with insurance company admitted to write insurance in California, or carriers with a rating of, or equivalent to, A-VII by A. M. Best & Company to, and approved by the City, against claims for injuries to persons or damages to property which may arise from or in connection with Contractor's performance of work or services under this Contract. Contractor's performance of work or services shall include performance by Contractor's employees, agents, representatives and subcontractors.

11.01.1 Minimum Scope of Insurance

Insurance coverage shall be at least this broad:

- Insurance Services Office Form No. GL 0002 (Ed. 1/96) covering Comprehensive General Liability and Insurance Services Office Form No. GL 0404 covering Broad Form Comprehensive General Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001), including X, C, U where applicable.
- Insurance Services Office Form No. CA 0001 (Ed. 12/93) covering Automobile Liability, code 1 "any auto", or code 2 "owned autos" and endorsement CA 0025. Coverage shall also include code 8, "hired autos" and code 9 "non-owned autos".
- Workers' Compensation insurance as required by the California Labor Code and Employers Liability Insurance.
- Hazardous Waste and Environmental Impairment Liability Insurance.

11.02 MINIMUM LIMITS OF INSURANCE

Contractor shall maintain insurance limits no less than:

- Comprehensive General Liability: (\$10,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Contract or the general aggregate limit shall be twice the required limit.

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- Automobile Liability: (\$10,000,000) combined single limit per accident for bodily injury and property damage.
- Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of (\$1,000,000) per accident.
- Hazardous Waste and Environmental Impairment Liability: (\$3,000,000) per occurrence.

11.03 DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retention must be declared to, and approved by the City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the Indemnities; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by City's Risk Manager.

11.04 ENDORSEMENTS

The policies are to contain, or be endorsed to contain, the following provisions:

11.04.1 General Liability and Automobile Liability Coverage

- The City, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by, or on behalf of, Contractor; products and completed operations of Contractor; premises owned, leased or used by Contractor; and automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
- Contractor's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance, or self-insurance maintained by City, its officers, employees, agents or contractors shall be in excess of Contractor's insurance and shall not contribute with it.
- Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officers, employees, agents, or contractors.

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- Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

11.04.2 All Coverage

Each insurance policy required by this Contract shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days (ten (10) days in the event of cancellation due to non-payment) prior written notice has been given to City.

11.05 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Guide of category VII or larger, and a rating classification of A- or better acceptable to City's Risk Manager.

11.06 VERIFICATION OF COVERAGE

Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Contract. The certificates and endorsement for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Contractor shall furnish City with a new certificate of insurance and endorsements on each renewal of coverage or change of insurers.

11.06.1 Proof of Insurance

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Clerk:

CITY OF OCEANSIDE
CITY CLERK
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

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CITY OF OCEANSIDE
SOLID WASTE CONTRACT ADMINISTRATOR
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

11.07 SUBCONTRACTORS

Contractor shall include all subcontractors physically performing services in the City as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

11.08 MODIFICATION OF INSURANCE REQUIREMENTS

Subject to the requirements of Section 14.07, the insurance requirements provided in this Contract may be modified or waived by City's Risk Manager, in writing, upon the request of Contractor if the City's Risk Manager determines such modification or waiver is in the best interest of City considering all relevant factors, including exposure to City.

11.09 RIGHTS OF SUBROGATION

All required insurance policies shall preclude any underwriter's rights of recovery or subrogation against City with the express intention of the parties being that the required insurance coverage protects both parties as the primary coverage for any and all losses arising in connection with Contractor's performance of work or services under this Contract covered by the above-described insurance. Contractor shall ensure that any companies issuing insurance to cover the requirements contained in this Contract agree that they shall have no recourse against City for payment or assessments in any form on any policy of insurance. The clauses 'Other Insurance Provisions' and 'Insured Duties in the Event of an Occurrence, Claim or Suit' as it appears in any policy of insurance in which City is named as an additional insured shall not apply to City.

ARTICLE 12. INDEMNIFICATION AND BOND

12.01 INDEMNIFICATION

Contractor shall indemnify and hold harmless City, public officials, officers, directors, employees, agents and other contractors, from and against any and all claims, costs,

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losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals as well as all Court or other dispute resolution costs), liabilities, expenditures or causes of action of any kind (including negligent, reckless, willful or intentional acts or omissions of the Contractor, any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any services or anyone for whose acts any of them may be liable), arising from, relative to or caused by the performance of the services authorized or required by this Contract. This indemnity includes but is not limited to claims attributable to bodily injury, sickness, disease or death and to injury or destruction of tangible property, or the necessity or conduct of notice and hearing procedures required to effect any increase in Maximum Contractor Compensation (to the extent arising from the acts or omissions of Contractor). Contractor agrees, at Contractor's expense, after written notice from the City, to defend any action against the City that falls within the scope of this indemnity, and shall reimburse the City for reasonable costs and expenses incurred in assisting the Contractor with the defense. Additionally, if Contractor, after receipt of written notice from the City, fails to make any payment due under this Contract to the City, Contractor shall pay any reasonable attorneys' fees or costs incurred by the City in securing any such payment from Contractor. Payment of any amount due pursuant to the foregoing indemnity shall, after receipt of written notice by Contractor from the City that such amount is due, be made by Contractor prior to the City being required to pay same, or in the alternative, the City, at the City 's option, may make payment of an amount so due and Contractor shall promptly reimburse the City for same, together with interest thereon at the rate of twelve percent (12%) per annum simple interest from the date of receipt by Contractor of written notice from the City that such payment is due.

THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT.

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12.02 HAZARDOUS SUBSTANCES INDEMNIFICATION

Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City), reimburse, indemnify, and hold harmless Indemnitees from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any 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 Contractor that:

1. Results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise clean up, any Hazardous Contaminant (as defined herein); or
2. Relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

Contractor's obligations pursuant to this section shall apply, without limitation, to:

1. Any Claims brought pursuant to or based on the provisions of any environmental law;
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 of Contractor 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 Contractor;
4. Any Claims based on or arising out of or alleged to be arising out of any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Contract.

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The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any Affiliate of Contractor.

For purposes of this section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste 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" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this contract.

THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT.

Notwithstanding any provision herein to the contrary, the foregoing indemnity does not apply with respect to any facility to which Contractor is directed by the City to deliver Solid Waste, including Green Waste or Recyclable Materials, unless such facility is owned and operated by Contractor or an affiliate.

12.03 THE ACT INDEMNIFICATION AND GUARANTEE

To the extent authorized by law, Contractor agrees to indemnify and hold harmless City from and against all fines and/or penalties imposed by CalRecycle in the event the source reduction and recycling mandates or any other requirement of the Act are not met by City.

THE PROVISIONS OF THIS SECTION SHALL NOT TERMINATE OR EXPIRE, SHALL BE GIVEN THE BROADEST POSSIBLE INTERPRETATION AND SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS CONTRACT.

12.04 PERFORMANCE BOND

On or before December 15, 2010, the Contractor shall furnish to the City, and keep current, a Performance Bond in a form substantially similar as set forth in Exhibit 3 which is included in and attached to this Contract, for the faithful performance of this Contract and all obligations arising hereunder in an amount as follows:

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- Beginning January 1, 2011, the Contractor shall maintain a performance bond throughout the term of this Contract in the amount of Two Million Dollars (\$2,000,000.00).
- The performance bond shall be executed by a surety company licensed to do business in the State of California, having an, A-:VII or better rating, and approved by the City; and included on the list of surety companies approved by the Treasurer of the United States.

12.04.1 Letter of Credit

As an alternative to the performance bond required by Section 12.04, Contractor may deposit with City an irrevocable letter of credit in an amount as set forth in this Contract. If allowed, the letter of credit must be issued by an FDIC-insured banking institution chartered to business in the State of California, in the City's name, and be callable at the discretion of the City. Nothing in this Section shall, in any way, obligate the City to accept a letter of credit in lieu of the performance bond.

12.05 FOREFEITURE OF PERFORMANCE BOND

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

12.06 PERFORMANCE SECURITY BEYOND SERVICE TERM

Some Contract requirements extend beyond the term of this Contract and other requirements, such as State-approved diversion rates per Section 4.2.8, will not be substantiated until after the final service date. Therefore, the Contractor shall not terminate the performance bond or letter of credit, and will renew them to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond or letter of credit will automatically expire at the end of thirty six (36)

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months after the end of the term of this Contract. Permission from the City to discontinue holding these performance securities does not relieve Contractor of payments to the City that may be due, or may become due.

12.07 OBLIGATION

The execution of this Contract by the Contractor shall obligate the Contractor to comply with the foregoing indemnification provision; however, the collateral obligation of providing insurance must also be complied with as set forth in this Contract.

12.08 EXCEPTION

Notwithstanding other provisions of this Contract, Contractor's obligation to indemnify, hold harmless and defend City, its officers and employees shall not extend to any loss, liability, penalty, claim, damage, action or suit arising or resulting from acts or omissions constituting willful misconduct or active negligence of the City or its officers or employees, provided such active negligence or willful misconduct is determined by agreement between the parties or by findings of a court of competent jurisdiction,. In instances where City, it officers and/or employees are shown to have been actively negligent or engaged in willful misconduct and where that negligent or willful misconduct accounts for only a percentage of the liability involved, the obligation of Contractor, will be for the entire portion or percentage of liability not attributable to the active negligence or willful misconduct of City, its officers and/or employees.

ARTICLE 13. DEFAULT OF CONTRACT

13.01 TERMINATION

The City may cancel this Contract, except as otherwise provided below in this Section, by giving the Contractor thirty (30) days' advance written notice, to be served as provided in this Contract, upon the happening of any one of the following events:

1. The Contractor shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy (court) or a petition or answer seeking an arrangement for its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or any state

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thereof, or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

2. By order or decree of a Court, the Contractor shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of the stockholders of the Contractor, seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or of any state thereof; or
3. By, or pursuant to, or under the authority of any legislative act, resolution or rule or any order or decree of any Court or governmental board, agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property of the Contractor, and such possession or control shall continue in effect for a period of sixty (60) days; or
4. The Contractor has defaulted, by failing or refusing to pay in a timely manner the liquidated damages or other monies due the City and the default is not cured within thirty (30) days of receipt of written notice by City to do so; or
5. The Contractor has defaulted by allowing any final judgment for the payment of money to stand against it unsatisfied and the default is not cured within thirty (30) days of receipt of written notice by City to do so; or
6. In the event that the monies are due the City under are unpaid, or any other monetary claim made by the City is unsatisfied; provided that the Contractor shall not be in default if the sum of money is bonded. All bonds shall be in the form acceptable to the City Attorney; or
7. The Contractor has defaulted, by failing or refusing to perform or observe the terms, conditions or covenants in this Contract or any of the rules and regulations promulgated by the City pursuant thereto or has wrongfully failed or refused to comply with the instructions of the Contract Administrator relative thereto and the default is not cured within thirty (30) days of receipt of written notice by the City to do so, or if by reason of the nature of such default, the same cannot be remedied within thirty (30) days following receipt by the Contractor of written demand from the City to do so, the Contractor fails to commence the remedy of such default within thirty (30) days following such written notice or having so commenced shall

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fail thereafter to continue with diligence the curing thereof (with the Contractor having the burden of proof to demonstrate (a) that the default cannot be cured within thirty (30) days, and (b) that it is proceeding with diligence to cure the default, and such default will be cured within a reasonable period of time). Notwithstanding anything contained herein to the contrary, for the failure of the Contractor to provide Collection Services for a period of three (3) consecutive Work Days, the City may secure the Contractor 's records on the fourth (4th) Work Day in order to provide interim Collection services until such time as the matter is resolved and the Contractor is again able to perform pursuant to this Contract; provided, however, if the Contractor is unable for any reason or cause to resume performance at the end of thirty (30) days, all liability of the City under this Contract to the Contractor shall cease and this Contract may be deemed terminated by the City.

13.02 VIOLATIONS

Notwithstanding the foregoing and as supplemental and additional means of termination of this Contract under this Article, in the event that the Contractor's record of performance shows that the Contractor has frequently, regularly or repetitively defaulted in the performance of any of the covenants and conditions required herein to be kept and performed by the Contractor, in the opinion of the City and regardless of whether the Contractor has corrected each individual condition of default, the Contractor shall be deemed a "habitual violator", shall be deemed to have waived the right to any further notice or grace period to correct, and all of the defaults shall be considered cumulative and collectively shall constitute a condition of irredeemable default. In order to be deemed a "habitual violator" such violation must have occurred not less frequently than three (3) times in any Rate Year. The City shall thereupon issue the Contractor a final warning citing the circumstances therefore, and any single default by the Contractor of whatever nature, subsequent to the occurrence of the last of the cumulative defaults, shall be grounds for immediate termination of the Contract. In the event of any such subsequent default, the City may terminate this Contract upon giving of written final notice to the Contractor, such cancellation to be effective upon the date specified in the

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City's written notice to the Contractor, and all contractual payments due hereunder plus any and all charges and interest shall be payable to that date, and the Contractor shall have no further rights hereunder. Immediately upon the specified date in such final notice the Contractor shall proceed to cease any further performance under this Contract.

13.03 EFFECTIVE DATE OF TERMINATION

In the event of events specified in Sections 13.01 or 13.02, and except as otherwise provided in these subsections, termination shall be effective upon the date specified in the City's written notice to the Contractor and upon that date this Contract shall be deemed immediately terminated and upon such termination all liability of the City under this Contract to the Contractor shall cease, and the City shall have the right to call the performance bond and shall be free to negotiate with other contractors for the operation of the herein specified services. The Contractor for failure to perform shall reimburse the City all direct and indirect costs of providing interim Collection Services.

13.04 IMMEDIATE TERMINATION

City may terminate this Contract immediately upon written notice to Contractor in the event Contractor fails to provide and maintain the performance bond as required by this Contract, Contractor fails to obtain or maintain insurance policies endorsements as required by this Contract, Contractor fails to provide the proof of insurance as required by this Contract.

13.05 TERMINATION CUMULATIVE

City's right to terminate this Contract is cumulative to any other rights and remedies provided by law or by this Contract.

13.06 LIQUIDATED DAMAGES

It shall be the duty of Contractor to perform services under this Contract in accordance with its terms and conditions. In the event Contractor is in default of certain terms and conditions set forth in this Contract, the parties agree that the extent of damage to the City is difficult if not impossible to precisely determine, and for that reason City may

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assess liquidated damages against Contractor to recover its damages in the event of a breach by Contractor in the following amounts:

LIQUIDATED DAMAGES		
a.	Failure or neglect to resolve each complaint within the time set forth in this Contract in excess of six (6) per Rate Year.	\$150.00 per incident per Customer
b.	Failure to clean up spillage or litter caused by Contractor.	\$150.00 per incident per location, and any other fine levied by state, local or federal agencies.
c.	Failure to repair damage to Customer property caused by Contractor or its personnel.	\$150.00 per incident per location.
d.	Failure to maintain equipment in a clean, safe, and sanitary manner.	\$150.00 per incident per day.
e.	Failure to have a vehicle operator properly licensed.	\$150.00 per incident per day.
f.	Failure to maintain office hours as required by this Contract.	\$150.00 per incident per day.
g.	Failure to maintain or timely submit to City all documents and reports required under the provisions of this Contract.	\$150.00 per incident per day.
h.	Failure to properly cover materials in Collection Vehicles.	\$150.00 per incident, and any other fine levied by state, local or federal agencies.
i.	Failure to display Contractor's name and Customer Service phone number on Collection Vehicles, except for reserve vehicles.	\$150.00 per incident per day.
j.	Failure to comply with the hours or days of operation as required by this Contract.	\$150.00 per incident per day.
k.	Failure or neglect to complete at least ninety percent (90%) of each route on the regularly scheduled Collection Service Work Day.	\$150.00 for each route not completed.
l.	Failure to notify Contract Administrator of failure to complete daily routes.	\$150.00 per incident per day.
m.	Changing routes without proper notification to the Contract Administrator.	\$150.00 per incident per day.
n.	Commingling Residential or Commercial Solid Waste with Recyclable Materials.	\$150.00 per incident.

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LIQUIDATED DAMAGES		
o.	Commingling of materials collected inside and outside the City of Oceanside without prior approval by the City.	\$150.00 per incident.
p.	Failure to repair or replace damaged carts or bins within the time required by this Contract.	\$150.00 per incident per day.
q.	Failure to deliver or exchange carts or bins within the time required by this Contract.	\$150.00 per incident per day.
r.	Failure to have Contractor personnel in proper uniform.	\$150.00 per incident per day.
s.	Disposal of Recyclable Materials in the Disposal Facility without first obtaining the required permission of the City.	\$1,000.00 per occurrence

13.07 PROCEDURE FOR REVIEW OF LIQUIDATED DAMAGES

The City Manager may assess liquidated damages pursuant to this Contract on a monthly basis. At the end of each month during the term of this Contract, the City Manager shall issue a written notice to Contractor (“Notice of Assessment”) of the liquidated damages assessed and the basis for each assessment.

1. The assessment shall become final unless, within ten (10) days of the date of the Notice of Assessment, Contractor provides a written request for a meeting with the City Manager to present evidence that the assessment should not be made.
2. The City Manager shall schedule a meeting with Contractor as soon as reasonably possible after timely receipt of Contractor’s request.
3. The City Manager shall review Contractor’s evidence and render a decision sustaining or reversing the liquidated damages as soon as reasonably possible after the meeting. Written notice of the decision shall be provided to Contractor.
4. In the event Contractor does not submit a written request for a meeting within ten (10) days of the date of the Notice of Assessment, the City Manager’s determination shall be final and City may deduct the liquidated damages from amounts otherwise due to Contractor.
5. City’s assessment or collection of liquidated damages shall not prevent City from exercising any other right or remedy, including the right to terminate this Contract,

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for Contractor's failure to perform the work and services in the manner set forth in this Contract.

ARTICLE 14. OTHER AGREEMENTS OF THE PARTIES

14.01 INDEPENDENT CONTACTOR

In the performance of services pursuant to this Contract, Contractor shall be an independent contractor and not an officer, agent, servant or employee of City. Contractor shall have exclusive control of the details of the services and work performed and over all persons performing such services and work. Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any. Neither Contractor nor its officers, employees, agents, contractors or subcontractors shall obtain any right to retirement benefits, workers' compensation benefits, or any other benefits which accrued to City employees and Contractor expressly waives any claim it may have or acquire to such benefits.

14.02 COMPLIANCE WITH LAW

In the performance of this Contract, the City and the Contractor shall comply with all applicable laws, regulations, ordinances and codes of the federal, state and local governments, including without limitation the City of Oceanside City Code.

14.03 NO ASSIGNMENT

No assignment of this Contract or any right occurring under this Contract shall be made in whole or in part by the Contractor without the express prior written consent of the City Manager. The City Manager shall have full discretion to approve or deny, with or without cause, any proposed or actual assignment by the Contractor, except for an assignment to an Affiliate of Contractor, which shall not be withheld unreasonably. Any assignment of this Contract made by the Contractor without the express written consent of the City Manager shall be null and void and shall be grounds for the City to declare a default of this Contract and immediately terminate this Contract by giving written notice to the Contractor, and upon the date of such notice this Contract shall be deemed immediately terminated, and upon such termination all liability of the City under this Contract to the Contractor shall cease, and the City shall have the right to call the performance bond

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and shall be free to negotiate with other contractors, the Contractor, or any other person or company for the service which is the subject of this Contract. In the event of any assignment, the assignee shall fully assume all the liabilities of the Contractor.

14.04 USE OF SUBCONTRACTOR

The use of a subcontractor to perform services under this Contract shall not constitute an assignment of Contractor's duties provided that Contractor has received prior written authorization from the Contract Administrator, in his or her reasonable judgment, to subcontract such services and the Contract Administrator has approved a subcontractor who will perform such services. Contractor shall be responsible for directing the work of Contractor's subcontractors and any compensation due or payable to Contractor's subcontractor shall be the sole responsibility of Contractor. The Contract Administrator shall have the right to require the removal of any approved subcontractor for reasonable cause.

14.05 SUBCONTRACTORS

The Contractor shall require all subcontractors to enter into a contract containing the provisions set forth in the preceding subsection in which contract the subcontractor agrees that Contractor and subcontractor are independent contractors and have no other agency relationship with City.

14.06 NONDISCRIMINATION

In the performance of all work and services under this Contract, Contractor shall not discriminate against any person on the basis of such person's race, sex, color, national origin, religion, marital status or sexual orientation. Contractor shall comply with all applicable local, state and federal laws and regulations regarding nondiscrimination, including those prohibiting discrimination in employment.

14.07 MODIFICATIONS

The City shall have the power to make changes in this Contract, as provided below. The City shall give the Contractor notice of any proposed change and an opportunity to be heard concerning those matters.

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14.07.1 Change in Law

The City and the Contractor understand and agree that the California Legislature and regulatory agencies have the authority to make comprehensive changes in Solid Waste Management legislation and regulations, including but not limited to fees and charges imposed under federal, state or local law related to the provisions of solid waste services, and that these and other changes in law in the future which mandate certain actions or programs for counties or municipalities may require changes or modifications in some of the terms, conditions or obligations under this Contract. The Contractor agrees that the terms and provisions of the City of Oceanside City Code, as it now exists or as it may be amended in the future, shall apply to all of the provisions of this Contract and the Customers of the Contractor located within the Service Area. In the event any future change in the City Code, or other federal, state or local laws, regulations or requirements, that materially alter the obligations of the Contractor, the City requests a change in the scope of services, or there is an increase or decrease in a fee or charge applicable to the provision of Solid Waste Services, then the affected service rates, as established in Exhibit 1 of this Contract shall be adjusted. Nothing contained in this Contract shall require any party to perform any act or function contrary to law. The City and Contractor agree to enter into good faith negotiations regarding modifications to this Contract which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to this Contract, the City and the Contractor shall negotiate in good faith a reasonable and appropriate compensation adjustment for any increase or decrease in the services or other obligations required of the Contractor due to any modification in the Contract under this Article. The City and the Contractor shall not unreasonably withhold agreement to such compensation adjustment.

14.07.2 City's Right to Direct Changes

City may direct Contractor to perform additional Solid Waste Collection and diversion services (including new diversion programs, etc.) or modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services which may entail new collection methods, and different kinds of services and/or new

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, including a profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. Contractor shall be subject to an adjustment in its Contractor Compensation if City directed changes result in a reduction in costs to the Contractor. City may utilize cost components provided with Contractor's proposed rates in calculating equitable rate adjustments. If the City Manager and Contractor cannot agree upon the amount of a rate adjustment authorized pursuant to this section, the City Council shall make a final determination and its decision is final and binding.

14.07.3 New Diversion Programs

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

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees, by classification).
- Type(s) of Containers to be utilized.
- Type(s) of materials to be collected.
- Provision for program publicity/education/marketing.
- Three-year projection of the financial results of the program's operations in an operating statement format including documentation of the key assumptions underlying the projections and the support for those assumptions.
- The added cost for providing such additional or expanded diversion services.

14.08 TRANSITION TO NEXT CONTRACTOR

In the event Contractor is not awarded a Contract to continue to provide Collection Services following the expiration or early termination of this Contract, Contractor shall cooperate fully with City and any subsequent contractors to assure a smooth transition of services described in this Contract. Such cooperation shall include but not be limited

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

to transfer of computer data, files and tapes; providing routing information, route maps, vehicle fleet information, and list of Customers; providing a complete inventory of all carts and bins; providing adequate labor and equipment to complete performance of all Collection Services required under this Contract; taking all actions necessary to transfer ownership of carts and bins, as appropriate, to City; including transporting such containers to a location designated by the Contract Administrator; coordinating collection of materials set out in new containers if new containers are provided for a subsequent Contract and providing other reports and data required by this Contract.

Where City has reason to believe that such records or documents may be lost or discarded due to the dissolution, disbandment or termination of Contractor's business, City may, by written request or demand of any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

ARTICLE 15. MISCELLANEOUS PROVISIONS

15.01 GOVERNING LAW

The law of the State of California shall govern the rights, obligations, duties and liabilities of City and Contractor under this Contract and shall govern the interpretation of this Contract.

15.02 JURISDICTION

The parties agree that any litigation between City and Contractor concerning or arising out of this Contract shall be filed and maintained exclusively in the Municipal or Superior Courts of San Diego County, State of California, or in the United States District Court for the Southern District of California to the fullest extent permissible by law. Each party consents to service of process in any manner authorized by California law.

15.03 WAIVER

Waiver by City or Contractor of any breach for violation of any term, covenant or condition of this Contract shall not be deemed to be a waiver of any other term,

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

covenant or condition or any subsequent breach or violation of the same or of any other term, covenant or condition. The subsequent acceptance by City of any payment or any other monies which may become due from Contractor to City shall not be deemed to be a waiver by City of any breach for violation of any term, covenant or condition of this Contract.

The failure of the City at any time to require performance by the Contractor of any provision hereof shall in no way affect the right of the City thereafter to enforce same. Nor shall waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.

15.04 ENTIRE CONTRACT; AMENDMENT

This document incorporates and includes all prior negotiations, correspondence, conversations, contracts and understandings applicable to the matters contained in this Contract and the parties agree that there are no commitments, contracts or understandings concerning the subject matter of this Contract that are not contained in this document. Accordingly, it is agreed that no deviation from the terms of this Contract shall be predicated upon any prior representations or Contracts, whether oral or written. This Contract and the Exhibits attached hereto constitute the entire Contract and understanding between the parties hereto, and it shall not be considered modified, altered, changed or amended in any respect unless in writing and signed by the parties hereto, and approved by the City Council.

Each Exhibit referred to in this Contract forms an essential part of this Contract. Each such Exhibit is a part of this Contract and each is incorporated by this reference.

15.05 SECTION HEADINGS

Headings in this document are for convenience of reference only and are not to be considered in any interpretation of this Contract.

15.06 CONSIDERATION

It is specifically understood and agreed that the consideration inuring to the Contractor for the execution of this Contract consists of the promises, payments, covenants, rights and responsibilities contained in this Contract.

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

15.07 SEVERABILITY

If any provision of this Contract or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Contract and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

15.08 DAMAGE BY CONTRACTOR

If Contractor's employees or subcontractors cause any injury, damage or loss to City property, including but not limited to City streets or curbs, normal wear and tear excepted, Contractor shall reimburse City for City's cost of repairing such injury, damage or loss. Such reimbursement is not in derogation of any right of City to be indemnified by Contractor for any such injury, damage or loss. With the prior written approval of City, Contractor may repair the damage at Contractor's sole cost and expense.

15.09 ACKNOWLEDGMENT

It is acknowledged that each party was, or had the opportunity to be, represented by counsel in the preparation of and contributed equally to the terms and conditions of this Contract and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing the same shall not apply herein due to the joint contributions of both parties.

15.10 CONTRACTOR STATUS

Contractor represents and warrants that it is duly organized, validly existing and in good standing under applicable laws. It is qualified to transact business in the State of California and has the power to own its properties and to carry on its business as now owned and operated and as required by this Contract.

15.11 CONTRACTOR AUTHORIZATION

Contractor represents and warrants that it has the authority to enter into and perform its obligations under this Contract. The Board of Directors of Contractor (or the shareholders, if necessary) has taken all actions required by law, its articles of

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

incorporation, its bylaws or otherwise to authorize the execution of this Contract. The persons signing this Contract on behalf of Contractor have authority to do so. Contractor acknowledges and agrees that City may expect and assume that the actions of Contractor's Contract Liaison designated under Section 6.05.8 are taken on behalf of and with the full approval of the Contractor.

15.12 REPRESENTATIONS

Contractor warrants and represents that no elected official, officer, agent or employee of the City has a financial interest, directly or indirectly, in this Contract, the compensation to be paid under it and, further, that no City employee who acts in the City as a "purchasing agent" as defined in California Statutes, nor any elected or appointed officer of the City, nor any spouse or child of such purchasing agent, employee or elected or appointed officer, is a partner, officer, director or proprietor of the Contractor and, further, that no such City employee, purchasing agent, City elected or appointed officer, or the spouse or child of any of them, alone or in combination, has a material interest in the Contractor as defined by applicable state law and regulations..

15.13 PERMITS & LICENSES

Contractor shall obtain, at its own expense, all permits and licenses required by law or ordinance and maintain same in full force and effect throughout the term of this Contract. Contractor shall provide proof of such permits, licenses or approvals and shall demonstrate compliance with the terms and conditions of such permits, licenses and approvals upon the request of the Contract Administrator.

15.14 CITY OWNERSHIP

All reports, documents, brochures, public education materials, and other written, printed, electronic or photographic materials developed by City or Contractor in connection with the services to be performed under this Contract, whether developed directly or indirectly by City or Contractor shall be and shall remain the property of City without limitation or restrictions on the use of such materials by City. Notwithstanding the above, all financial records and data remain the property of Contractor. Contractor shall not use such materials in connection with any project not connected with this Contract without the prior written consent of the Contract Administrator. This Section 15.14 does

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

not apply to ideas or concepts described in such materials and does not apply to the format of such materials.

15.15 EXEMPT WASTE

The Contractor shall not be required to collect or dispose of Exempt Waste, but may offer such services. All such Collection and disposal of Exempt Waste is not regulated under this Contract, but if provided by the Contractor shall be in strict compliance with all federal, state and local laws and regulations. If Contractor is aware of any Exempt Waste and chooses not to collect it, Contractor must notify City of the Exempt Waste.

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

ARTICLE 16. NOTICES

Except as provided herein, whenever either party desires to give notice to the other, it must be given by written notice addressed to the party for whom it is intended, at the place last specified and to the place for giving of notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective persons and places for giving of notice:

As to the CITY:

City of Oceanside
City Manager
300 North Coast Highway
Oceanside, CA 92054
Telephone: (760) 435-3065

As to the CONTRACTOR:

Waste Management of California, Inc.
District Manager
2141 Oceanside Blvd.
Oceanside, CA 92054
Telephone: (760) 754-4111

with copy to

Waste Management – Western Group
7025 N. Scottsdale Road
Suite 200
Scottsdale, AZ 85253
Attention: Group Legal Counsel
Telephone: (480) 624-8573

OCEANSIDE SOLID WASTE SERVICES DRAFT CONTRACT

Notices shall be effective when received at the address as specified above. Changes in the respective address to which such notice is to be directed may be made by written notice. Facsimile transmission is acceptable notice, effective when received; facsimile transmissions received (i.e., printed) after 4:30 p.m. on any Work Day or on weekends or holidays will be deemed received on the next Work Day. The original of items that are transmitted by facsimile equipment must also be mailed as required herein.

Notice by City to Contractor of a Collection or other Customer problem or complaint may be given to Contractor orally by telephone at Contractor's local office with confirmation sent to Contractor through the Customer Service System by the end of the Work Day.

IN WITNESS WHEREOF, the City and the Contractor have executed this Contract on the respective date(s) below each signature.

CITY OF OCEANSIDE

CONTRACTOR

City Manager

Name

ATTEST:

City Clerk

Name

APPROVED AS TO FORM

Title:

City Attorney

EXHIBIT 1 – INITIAL RATES

EXHIBIT 2
EXAMPLE RATE ADJUSTMENT –

EXHIBIT 3
PERFORMANCE BOND

(To be inserted after contract award)

EXHIBIT 4

LIST OF CITY FACILITIES

EXHIBIT 5
BULKY WASTE

Acceptable Bulky Waste but limited to the following Items:

Barbeque (no propane tank)	Ladder (8 feet or less)
Basketball Hoop (6 feet or less)	Lawn Mower (no gas)
Bath Tub (no shower)	Mirrors **
Bed Frame	Mattress
Bookshelf	Patio Furniture (one item)
Boxspring	Pool (kid's wading)
Bureau	Refrigerator
Buffett	Rugs
Couch/Sofa/Davenport	Sink
Chair/Recliner	Bikes
Closet Doors (2) non-glass	Spa Cover (cut in half)
Dresser	Stove
Door	Swing Set **Table (dining, end, coffee)
Dryer	Table (dining, end, coffee)
Desk	Toilet
Dishwasher	Washer
File Cabinet	Water Heater (empty of water)
Freezer	Weight Bench
Garage Door Opener	Wheel barrow
Gym Set **	Wood/Lumber (4'x18" bundles, maximum 4
bundles)	
Hutch	

**** REQUIRES SPECIAL HANDLING**

Mirrors – Package between two pieces of cardboard, or completely tape the mirrored area with heavy duty tape to prevent shattering.

Gym Set – Disassemble and bundle

Swing Set – Disassemble and bundle

Non Acceptable Items:

TRASH

Auto Parts

Bath Tubs w/showers attached

Boats

Camper Shell

Cabinets (bathroom, kitchen, etc.)

Carpet

Construction & Demolition Debris

Electronic Waste

Fencing

Garage Door

Green Waste

Household Hazardous Waste

Kitchen/Bathroom Cabinets

Piano

Plywood / Wallboard

Pool

Pool Table

Roofing

Satellite Dish

Shopping Cart

Shower Module

Sliding Glass Door

Spa

Tires

Tree Stump

Universal Waste (batteries/fluorescent bulbs)

Window

City of Oceanside

Exhibit 1 - Initial Rates/Maximum Contractor Compensation

Proposed Monthly Rates - Effective 1/1/11

Rates

Residential Services

Residential Service-one 96 gal each refuse, recycling and GW cart
1x week service
1x week service-small quantity generator*

Residential Cart Service			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$17.21	\$0.64	\$1.59	\$19.44
\$15.21	\$0.57	\$1.40	\$17.18

Customer default service is 3 carts (1 trash, 1 recy & 1 GW). Beyond that, one (1) additional green waste cart & two (2) additional recycling carts will be free of charge. After those free additional carts, any additional carts will have a monthly charge.

*Small quantity generator rate shall become effective for individual Customers upon delivery of the thirty-five (35) gallon cart.

Commercial Services

Pickups per Week
1
2
3
4
5
6
Sunday Service

2 or 3 Yard Bin Service			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$83.84	\$3.16	\$7.77	\$94.77
\$151.76	\$5.72	\$14.06	\$171.54
\$219.70	\$8.28	\$20.36	\$248.34
\$287.64	\$10.82	\$26.65	\$325.11
\$355.55	\$13.39	\$32.94	\$401.88
\$423.53	\$15.94	\$39.24	\$478.71
\$149.75	\$5.69	\$13.88	\$169.32

Pickups per Week
1
2
3
4
5
6
Sunday Service

4 Yard Bin Service			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$110.24	\$4.15	\$10.23	\$124.62
\$199.31	\$7.50	\$18.49	\$225.30
\$288.41	\$10.86	\$26.76	\$326.03
\$377.46	\$14.19	\$35.02	\$426.67
\$466.58	\$17.57	\$43.29	\$527.44
\$555.58	\$20.92	\$51.54	\$628.04
\$194.02	\$7.31	\$18.00	\$219.33

Pickups per Week
1
2
3
4
5
6
Sunday Service

5 Yard Bin Service**			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$137.80	\$5.19	\$12.78	\$155.77
\$249.14	\$9.38	\$23.11	\$281.63
\$360.51	\$13.58	\$33.45	\$407.53
\$471.83	\$17.74	\$43.77	\$533.34
\$583.23	\$21.96	\$54.11	\$659.30
\$694.48	\$26.15	\$64.43	\$785.06
\$242.53	\$9.14	\$22.50	\$274.17

Pickups per Week
1
2
3
4
5
6
Sunday Service

6 Yard Bin Service**			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$165.36	\$6.23	\$15.34	\$186.93
\$298.97	\$11.25	\$27.74	\$337.95
\$432.62	\$16.29	\$40.14	\$489.04
\$566.19	\$21.29	\$52.53	\$640.00
\$699.87	\$26.36	\$64.93	\$791.16
\$833.37	\$31.38	\$77.32	\$942.07
\$291.03	\$10.97	\$27.00	\$329.00

** 5 & 6 Yard Solid Waste Service Rates will only be available after we roll out the new commercial fleet

City of Oceanside

Exhibit 1 - Initial Rates/Maximum Contractor Compensation

Proposed Monthly Rates - Effective 1/1/11

Pickups per Week
1
2

Commercial Can Service-Includes 2 - 96 gal carts			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$23.32	\$0.88	\$2.14	\$26.34
\$42.39	\$1.59	\$3.90	\$47.88

Pickups per Week
1
2
3
4
5
6

3 Yd Commingle or Cardboard/Mixed Paper Bin Service			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$40.94	\$1.56	\$4.44	\$46.94
\$81.88	\$3.12	\$8.89	\$93.89
\$122.82	\$4.68	\$13.33	\$140.83
\$163.76	\$6.24	\$17.77	\$187.77
\$204.70	\$7.80	\$22.21	\$234.71
\$245.64	\$9.36	\$26.66	\$281.66

Pickups per Week
1
2
3
4
5
6

4 Yd Commingle or Cardboard/Mixed Paper Bin Service			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$54.45	\$2.07	\$5.91	\$62.43
\$108.90	\$4.15	\$11.82	\$124.87
\$163.35	\$6.22	\$17.73	\$187.30
\$217.80	\$8.30	\$23.64	\$249.74
\$272.25	\$10.37	\$29.55	\$312.17
\$326.70	\$12.45	\$35.46	\$374.61

Pickups per Week
1
2
3
4
5
6

6 Yd Commingle or Cardboard/Mixed Paper Bin Service			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$81.68	\$3.11	\$8.86	\$93.65
\$163.35	\$6.22	\$17.73	\$187.30
\$245.03	\$9.34	\$26.59	\$280.95
\$326.70	\$12.45	\$35.46	\$374.61
\$408.38	\$15.56	\$44.32	\$468.26
\$490.05	\$18.67	\$53.18	\$561.91

Pickups per Week
1

3 Yard Green Waste Bin Service			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$67.47	\$2.59	\$7.53	\$77.59

96 Gal Toter-Commercial Recycling
Comm/MF Complex Green Waste Toter- 1 x week
Commercial Commingle Toter- 1 x wk
Multi Family Recycling-per unit charge

Commercial 96 Gallon Recycling Toter Service			
Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$14.62	\$0.56	\$1.58	\$16.76
\$12.95	\$0.50	\$1.40	\$14.85
\$1.01	\$0.04	\$0.11	\$1.16

City of Oceanside
Exhibit 1 - Initial Rates/Maximum Contractor Compensation
Proposed Monthly Rates - Effective 1/1/11

Frequency
1
2
3
4
5
6

2 or 3 Yard Compactor Service

Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$165.16	\$6.23	\$15.30	\$186.69
\$298.97	\$11.27	\$27.70	\$337.94
\$432.81	\$16.31	\$40.10	\$489.22
\$566.65	\$21.32	\$52.50	\$640.47
\$700.43	\$26.38	\$64.90	\$791.71
\$834.35	\$31.40	\$77.31	\$943.06

Roll Out Fees and Lock Fees
Roll Out Fees -up to 15 ft./per bin times # of pickups/wk
Roll Out Fees -16 ft-50 ft/per bin times # of pickups/wk Each add'l 50 ft - add \$3.76/per bin times # of pickups/wk
Initial Lock Fee-per mo charge for 1x/wk service per container
Add'l Lock Fee per add'l pickup/wk, per container
Example: 1 bin with 1 lock serviced 3 times per/wk = \$7.64 (\$3.82 + \$1.91 + \$1.91)

Roll Out Fees & Lock Fees

Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$3.76	\$0.14	(\$0.13)	\$3.77
\$7.52	\$0.28	(\$0.27)	\$7.53
\$3.82	\$0.14	(\$0.14)	\$3.82
\$1.91	\$0.06	(\$0.07)	\$1.90

Frequency
1
2
3
4
5
6

Scout Service - Bins or Compactor Bins

Total Rate to Contractor	Storm Water Fee	Rate Stabilization	Total Rate to Customer
\$35.97	\$1.36	\$3.33	\$40.66
\$71.94	\$2.71	\$6.67	\$81.32
\$107.91	\$4.07	\$10.00	\$121.98
\$143.87	\$5.41	\$13.33	\$162.61
\$179.84	\$6.77	\$16.66	\$203.28
\$215.81	\$8.12	\$20.00	\$243.93

Scout Service charges are in addition to the bin service charge and any lock or roll out fees.

City of Oceanside
Exhibit 1 - Initial Rates/Maximum Contractor Compensation
Proposed Monthly Rates - Effective 1/1/11

Additional Commercial Services

Total Rate to Contractor/ Customer

New bin lock fee (including removal of non-locking bin - one time charge)
 Per bin \$20.44

Lock Replacement charge
 Per bin \$9.52

Extra Dump Fee Compactor - 3 yard bin extra dump fee shall be charged per compactor for an additional pickup when such pickup is requested by a customer.
 Per Load \$112.48

Extra Dump Fee 3 yard bin - An extra dump fee shall be charged per bin for an additional bin pickup when such pickup is requested by a customer.
 Per Load \$49.00

Extra Dump Fee 4 yard bin - An extra dump fee shall be charged per bin for an additional bin pickup when such pickup is requested by a customer.
 Per Load \$66.00

Extra Dump Fee 5 yard bin - An extra dump fee shall be charged per bin for an additional bin pickup when such pickup is requested by a customer.
 Per Load \$83.00

Extra Dump Fee 6 yard bin - An extra dump fee shall be charged per bin for an additional bin pickup when such pickup is requested by a customer.
 Per Load \$100.00

Extra Dump Fee 3,4 or 6 yard bin Recycling - An extra dump fee shall be charged per bin for an additional bin pickup when such pickup is requested by a customer.
 Per Load \$39.00

Instabin, general clean up, residential user, household material, average weight
 Per pickup \$89.00

Instabin for remodel/construction, resident or contractor user, wood/other material, heavy weight
 Per pickup \$121.00

Instabin, demolition, resident or contractor user, concrete, asphalt, rock, tile, other similar heavy material
 Per pickup \$121.00

Contamination Fee-to recover costs for separating solid waste placed in Recycling Material or Green Waste containers or for arranging special, unscheduled collection due to contamination. For MF and Commercial customers only.
 Per pickup \$50.00

City of Oceanside
Exhibit 1 - Initial Rates/Maximum Contractor Compensation
Proposed Monthly Rates - Effective 1/1/11

Roll-Off Service/Pass through disposal and pass through franchise fee/3 TON MINIMUM

RO Haul Service-3 TON MINIMUM	Rate to Contractor/ Customer
40/20/10 Yard-haul to Escondido	\$269.00 plus pass through disposal and pass through franchise fee = total rate
Compactor haul to Escondido	\$272.00 plus pass through disposal and pass through franchise fee = total rate
40/20/10 Yard-haul to Palomar	\$202.51 plus pass through disposal and pass through franchise fee = total rate
Compactor -haul to Palomar	\$204.44 plus pass through disposal and pass through franchise fee = total rate
40/20/10 Yard-haul to El Cajon	\$342.51 plus pass through disposal and pass through franchise fee = total rate
Compactor-haul to El Cajon	\$346.00 plus pass through disposal and pass through franchise fee = total rate
40/20/10 Yard-haul to Otay	\$342.51 plus pass through disposal and pass through franchise fee = total rate
Compactor-haul to Otay	\$346.00 plus pass through disposal and pass through franchise fee = total rate
40/20/10 Yard-haul to Sycamore	\$302.51 plus pass through disposal and pass through franchise fee = total rate
Compactor-haul to Sycamore	\$306.00 plus pass through disposal and pass through franchise fee = total rate
40/20/10 Yard-haul to Miramar	\$262.51 plus pass through disposal and pass through franchise fee = total rate
Compactor-haul to Miramar	\$265.00 plus pass through disposal and pass through franchise fee = total rate
40/20/10 Yard-haul to San Marcos-C&D	\$249.32 plus pass through disposal and pass through franchise fee = total rate
40/20/10 Yard-haul to AgriService	\$202.51 plus pass through disposal and pass through franchise fee = total rate
Standby Time per minute	\$2.06
charge starts after 5 min with a 15 min maximum	
Demurrage charges per day-starts day 1	\$10.85
Dry Run Chg/Trip Fee Chg-if box is unserviceable	\$142.56
Relocate Off Site	\$47.83
Relocate On site	\$51.60
Delivery	\$47.83

City of Oceanside
Exhibit 1 - Initial Rates/Maximum Contractor Compensation
Proposed Monthly Rates - Effective 1/1/11

Other Fees and Charges:

Other Fees and Charges:

Total Rate to Contractor/
Customer

Extra trash cart beyond 1st one.

Per Cart	\$2.23
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One additional green waste cart, and/or one or two additional recycling carts will be free of charge, after that, each add'l one will be a charged.

Per Cart	\$2.23
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Delivery of extra cart

Per Cart	\$10.00
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Restart Fee- The fee for Restarting commercial service when a permanent account has been terminated for non payment.

Per Occurrence	\$17.10
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Bin exchange/steam clean fee - allowed 2 per year. After second exchange within one year, there will be a charge per exchange.

Per Bin	\$55.00
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Bin paint charge fee - allowed 1 per year. After first paint within one year, there will be a charge per exchange

Per Bin	\$87.00
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Interest Charge-Contractor may charge 1.5% interest per month on any delinquent account for such time as the bill remains unpaid after its due date.

Late Fee - There will be a minimum fee on any delinquent account - \$3 minimum charge

Per Account	\$3.00
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Single and Multi-Family Cart customers - 3 bulky item pickups per calendar year with 5 items maximum per pickup).

Bulky Item - Exceeding 5 per pickup-1st item	\$39.00
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Bulky Item - Exceeding 5 per pickup-each add'l item	\$10.00
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Multi Family and Commercial Bin Customers shall be charged for bulky item pickups.

Per Bulky Item- first item	\$39.00
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Per Bulky Item -each add'l item	\$10.00
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Bulky Item requiring 2 people to handle

Per Bulky Item Trip	\$56.00
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Bins that are overloaded can be charged a fee.

Overload bin Fee	\$27.00
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BAGSTER

Per Collection	\$129.00
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EXHIBIT 2
Rate Adjustment Example

City of Oceanside
Exhibit 2 - Rate Adjustment Methodology

STEP ONE: Calculate Percentage Change in Indices						
Row	Rate Index	A Old Index	B New Index	C Percent Change in Index ((Column B/ Column A)-1)	D Index Weighting	E Total Weighted Change (Column C x D)
1	CPI - All Urban Consumers - San Diego (1)	233.32	242.31	3.85%	75.00%	2.89%
2	CPI - All Urban Consumers - U.S. City Average (2)	207.34	215.30	3.84%	100.00%	3.84%
3	Total Percentage Rate Adjustment (Use Total Weighted Percent Index Change that produces the highest change.)					3.84%
STEP TWO: Apply Percentage Change to Rates						
Row	Rate Category	F Current Rate	G Total Weighted Percentage Change (from Row 3, Column E)	H Rate Increase or Decrease (Column F x Column G)	I Adjusted Rate (Column F + Column H)	
4	SFD (3-Carts, Solid Waste, Recycling & Green Waste)	17.21	3.84%	0.66	17.87	
5	SFD Small Quantity Generator	15.21	3.84%	0.58	15.79	
6	Additional Solid Waste Cart Beyond One	2.23	3.84%	0.09	2.32	
7	Additional Green Waste Cart Beyond Two	2.23	3.84%	0.09	2.32	
8	Additional Recycling Cart Beyond Three	2.23	3.84%	0.09	2.32	
9	Delivery of extra Cart	10.00	3.84%	0.38	10.38	
10	2 or 3 Yard Bin Service	83.84	3.84%	3.22	87.06	
11	40/20/10 Yard - Haul to Escondido	269.00	3.84%	10.33	279.33	

- (1) Consumer price index - All Urban Consumers, San Diego, CA All Items CUURA424SA0 as of December 31 prior to July 1st when the rate change will take effect. Initial index based on CPI for December 31, 2011.
- (2) Consumer price index - All Urban Consumers, U.S. City Average All Items CUUR0000SA0 as of December 31 prior to July 1st when the rate change will take effect. Initial index based on CPI for December 31, 2011.

2008 PRIORITIES

2. NEAR-TERM UNFUNDED PROJECTS (0-5 YEARS)

Based on prior input, discussion and direction, the following lists the City's near-term unfunded community facilities priorities and their estimated cost for construction:

<u>Project</u>	<u>Estimated Cost</u>
Permanent Fire Station 8 (per 4/16/08 memo - attached)	\$ 4.0 M
Beach Sand Replenishment	\$ 0.5 M
Multiple Habitat Conservation Project (MHCP)	\$ 0.5 M
Buccaneer Beach Restroom Replacement	\$ 0.5 M
Pier Rehab	\$ 4.5 M
Fire Station 1	\$11.5 M
Senior Center Phase II	\$4.0 M
Branch and Main Libraries Remodel	\$ 3.0 M
Total	\$28.5 M

3. LONG-TERM PROJECTS (6> YEARS)

The City has identified a number of long-term priorities that have no identified funding source. At this time, these projects are for long-term planning purposes only, and staff will assess alternate funding sources, such as grants, public/private partnerships and similar creative sources at such time as any of the projects may become a planning priority.

Included among the long-term FY 2010-2020 community facilities priorities and the estimated cost of construction are:

<u>Project</u>	<u>Estimated Cost</u>
El Corazon Park	TBD
Balderrama Park Gym and Recreation Center	\$8.0 M
Public Safety Center	\$100-120 M
Fire Stations 9	\$8.3 M
Fire Station 10	\$8.7 M
Fire Station 11	\$17.3 M
Quiet Zones	N/A
Beach Area Improvements	\$50.0 M
New Central Library	\$40.0 M
City Clerk Records Center	\$2.5 M
Library Renovations	\$1.0 M
Fire Training Center	\$10.5 M
Fire Logistics Facility	\$5.0 M
Total	\$271.3 M+