

THIS AGREEMENT IS MADE THIS 3RD DAY OF JULY BY AND BETWEEN THE CITY OF PALM SPRINGS (THE "CITY"), A CHARTER CITY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF CALIFORNIA, AND PALM SPRINGS DISPOSAL SERVICES ("CONTRACTOR"), A CALIFORNIA CORPORATION.

RECITALS

- A. The City is responsible for providing Solid Waste Management Services to its citizens, including source reduction, recycling, composting activities and the collection, transfer and disposal of solid waste within the City boundaries in a manner consistent with Solid Waste handling requirements, as set forth in California Public Resources Codes, Section 40000, et seq., which is commonly known as the California Integrated Waste Management the Act of 1989, including without limitation the provisions of AB 939, SB 1016, AB 341 (AB 939) as may be amended from time to time.
- B. The City's Charter and Municipal Code, consistent with the provisions of AB 939, including § 40059, provides that aspects of solid waste handling of local concern include but not limited to frequency of collection, means of collection and transportation, level of services, charges, and fees, and nature, location, and extent of providing solid waste services, and whether the services are to be provided by means of nonexclusive, partially exclusive, or wholly exclusive, or wholly exclusive franchise, contract, license, or otherwise which may be granted by the City under term and conditions prescribed by the City Council. Pursuant to such authority, the City Council has determined that once-weekly residential service and the concomitant reduction in vehicle trips, emissions, and potential traffic conflicts is appropriate and adequate and the reduction in residential rates of 14% is fair and equitable for the residents of the City.
- C. The City Council has determined to provide Solid Waste Management Services by providing an exclusive franchise agreement to a Solid Waste enterprise to maintain reasonable rates for collection, transportation, recycling, composting, and disposal of Solid Waste, Recyclables, and compostable materials generated within the City. Contractor has demonstrated through its past performance under its previous franchise agreement dated July 18, 2003, as amended, and in negotiations conducted with the City, that Contractor is qualified and competent to perform the solid waste management services desired by the City.
- D. Contractor represents and warrants to City that it has the experience, responsibility, and qualifications to conduct recycling programs, to provide City with information sufficient to meet the City's reporting requirements under AB 939, to assist the City in meeting City's other requirements under AB 939, to collect, transport, and dispose of solid waste in a safe manner which will minimize the adverse effects of collection vehicles on air quality and traffic and has the ability to indemnify the City against liability under CERCLA.

E. City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, and disposal of Solid Waste, including AB 939, the Resource Conservation and Recovery Act (“RCRA”), and the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). City and Contractor desire to leave no doubts as to their respective roles and to memorialize that by entering into this Agreement, City is not thereby becoming an “arranger” or a “generator” as those terms are used in CERCLA, and that it is Contractor, not City, who is “arranging for” the collection from residences in the City, transport for disposal, composting, and recycling of municipal Solid Waste which may contain hazardous substances; and further to confirm that Contractor has agreed to indemnify the City in connection with any claims relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Contractor’s performance under this Agreement.

F. The State of California (“State”) has found and declared that the amount of Solid Waste generated in California, coupled with diminishing landfill space and potential adverse environmental impacts from landfilling, have created an urgent need for State and local agencies to enact and implement an aggressive integrated waste management program. Through enactment of AB 939, the State has directed the responsible state agency, and all local agencies, to promote recycling and to maximize the use of feasible source reduction, recycling and composting options in order to reduce the amount of Solid Waste that must be disposed of by land disposal; and the City is required to divert from landfill disposal at least fifty percent (50%) of the municipal Solid Waste generated within the City; and may be subject to additional requirements during the Term of the Agreement.

G. The fees charged Contractor under this Agreement, including without limitation, the Franchise Fee, City Administration Fees, State Administration Fees, and Diversion Facility and Sustainability Fees are fee that provide Contractor with a special benefit or privilege and/or fees that are related to the access and use of City owned and maintained property and rights-of-way.

H. The City, by this Agreement does not instruct Contractor on its collection methods, nor supervise the collection of waste.

I. The Parties intend that this Agreement will contribute to providing the most cost-efficient, best Solid Waste Management Services to the residents and business establishments of Palm Springs.

J. The City Council of the City of Palm Springs determines and finds pursuant to California Public Resources Code Section 40059(a)(1), that the public health, safety, and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, and the protection of the City against CERCLA liability, require that Contractor be awarded an exclusive agreement for collection, recycling, and disposal of solid waste from premises in the City of Palm Springs.

NOW, THEREFORE, in consideration of the mutual promises, covenants, guaranties, and conditions contained in this Agreement and for other good and valuable consideration, the City and Contractor agree as follows:

ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION

1.1 Definitions. As used herein, first letter capitalized words shall have the meanings set forth in Exhibit A. In the event of any conflict with the definitions used in the recitals hereto, the definitions in Exhibit A shall control.

1.2 Interpretation.

1.2.1 Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and vice versa. Words importing the singular number mean and include the plural number, and vice versa, unless the context demands otherwise.

1.2.2 Headings. Any caption or headings following the Exhibit, Section, Subsection, paragraph and Article numbers and preceding the operative text hereof shall be for convenience of reference only and shall not in any way control or affect the scope, intent, meaning, construction, interpretation or effect hereof.

1.2.3 References to Parts. References to Sections and Articles refer to Sections and Articles hereof, unless specified otherwise. References to Exhibits refer to Exhibits attached hereto.

1.2.4 Examples. Uses of examples are for purpose of illustration only. In the event of any ambiguity or conflict between the examples and the provisions which they illustrate, the provisions shall govern.

1.2.5 Integration. This Agreement contains the entire Agreement between the parties with respect to the transactions contemplated hereby. This Agreement shall completely and fully supersede all prior understandings and agreements between the Parties with respect to such transactions, including those contained in any documents as part of the contract negotiations completed on the effective date described at Section 3.01. All exhibits and attachments referenced herein are incorporated by reference.

1.2.6 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California (without giving effect to the State's principles of conflicts of laws), the Charter of the City of Palm Springs, and the Palm Springs Municipal Code. Venue for suit shall be the County of Riverside and the Central District of the United States District Court.

1.2.7 Consistency with Law and Severability. The exclusive franchise, right and privilege to provide Solid Waste Handling Services at Premises within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect or adopted during the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. If due to inconsistency with law, any clause, sentence, provision, subsection, Section or Article hereof or Exhibit hereto shall be determined to be invalid, whether ruled invalid in any judicial proceeding, or be deemed likely to be invalid due to legislative, administrative or judicial precedent, then the Parties shall:

- A. Promptly meet and negotiate in good faith a substitute for such provision which shall, to the greatest legally permissible, affect the intent of the Parties therein.
- B. If necessary or desirable to accomplish preceding item (a) above, apply to the court or administrative body having declared such invalidity, for a construction of the substituted portion of this Agreement.
- C. Negotiate such changes in, substitution or additions to the remaining provisions hereof as may be necessary in addition to and in conjunction with preceding items (a) and (b) above to affect the intent of the Parties in the invalid provision.

1.2.8 Construction of Terms. This Agreement shall be interpreted and construed reasonable and neither for nor against either Party, regardless of the degree to which either Party participated in its drafting. Contractor acknowledges that it determined to participated in the procurement of this Agreement upon its choice and initiative with full knowledge of the terms, conditions and risks of participation. The Parties have negotiated this Agreement at arms length and with advice of their respective attorneys, and no provision herein shall be construed against the City solely because it prepared this Agreement in its executed form.

1.2.9 Interpretation. The terms and provisions of this Agreement shall be construed in accordance with the meaning of the language used and in a manner which carries out the purpose of this Agreement.

1.3 Mediation. In the event of any dispute or controversy arising out of or relating to this Agreement, or the breach of performance of it, the Parties shall reasonable attempt to resolve each such dispute or controversy without resort to third party review or resolution. The Parties shall first meet and confer on any such dispute or controversy . Such meetings shall include any principal of the Contractor and at the discretion of the City may include the City Manager. Any dispute that has not been resolved through the mediation process provided herein shall be resolved through the process provided in Palm Springs Municipal Code Section 6.04.232.

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

2.1 Of Contractor. The Contractor represents and warrants as of the date hereof, in accordance with Exhibit B.

2.2 Of City. The City represents and warrants as of the date hereof, in accordance with Exhibit C.

2.3 Waiver. The obligations of the Parties hereunder are preconditioned upon the truth and correctness of the representations and warranties made by the Parties, respectively, in this Article 2 provided that either Party may respectively waive such precondition, in whole or in part, if such waiver is acceptable by the other party, as demonstrated in writing by accepting party.

2.4 Mandatory Service. It is understood and agreed that Refuse Collection services of Contractor is a mandatory service of all Premises within the City of Palm Springs as provided in, and subject to the limitations of, the Palm Springs Municipal Code. City agrees to assist Contractor in enforcing the mandatory service requirement of this Agreement through the implementation of mandatory Collection and mandatory billing for delinquent accounts as a lien placed on the property tax bill as provided in the Palm Springs Municipal Code.

ARTICLE 3. GRANT OF FRANCHISE AND TERM OF AGREEMENT

3.1 Grant of Franchise. Following the Effective Date and for the term provided herein, City hereby grants Contractor the franchise, right and duty to enter upon and use city property (including city streets, roads, and rights-of-way) to collect, transfer, transport, recycle, process, and dispose of Solid Waste and Recyclable material accumulating within the City, which grant shall be exclusive except as provided in Section 3.02, and which grant shall be subject to all the terms and conditions of this Agreement.

3.2 Limitations of Exclusive Franchise. Notwithstanding any provision to the contrary contained in this Agreement, the exclusive franchise, right and privilege to provided Solid Waste Handling Services at Premises within City granted to Contractor by this Agreement specifically excludes the following services, which services may be provided by Persons other than Contractor and which may be subject of other permits, licenses, franchises or agreements issued or entered by City:

3.2.1 The sale or donation of Recyclable Material by the Waste Generator to any person or entity other than Contractor; provided, however, to the extent permitted by law, if the Generator is required to pay monetary or non-monetary consideration for the collection, transportation, transfer, or processing of Recyclable Material, the fact that the Generator receives a reduction of discount in price (or in other terms of the consideration the Generator is required to pay) shall not be considered a sale or donation;

3.2.2 Recyclable Materials and Green Waste, which his removed from the Premises by the Waste Generator, and which is transported personally by such Generator (or by his or her full-time employees) to a processing or Disposal Facility in a manner consistent with all applicable laws and regulations;

3.2.3 Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act (California Public Resources Code, Section 14500, et seq.);

3.2.4 Green Waste removed from a Premised by a gardening , landscaping, or tree trimming contractor, utilizing its own equipment, as an incidental part of a total service offered by that contractor rather than as a hauling service;

3.2.5 Construction and Demolition Debris removed from a premises by a contractor, building company, janitorial service or other entity utilizing its own equipment, as an incidental part of a total service offered by that contractor;

3.2.6 The collection, transfer, transport, Recycling, processing, and disposal of animal waste (excluding horse manure which is included in the scope of this Agreement) and remains from slaughterhouse or butcher shops for use as tallow;

3.2.7 The collection, transfer, transport, Recycling, processing, and disposal of by-products of sewage treatment, including sludge ash, grit and screenings;

3.2.8 The collection, transfer, transport, Recycling, processing, and disposal of Hazardous Substances, Hazardous Waste, and radioactive waste regardless of its source;

3.2.9 The collection, transfer, transport, Recycling, processing, and disposal of Solid Waste by the City through City officers or employees in the normal course of their employment;

3.2.10 Solid Waste Handling 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;

3.2.11 Solid Waste Handling Services provided by any person having a legal right to continue doing so, pursuant to California Public Resources Code Section 49520, et seq., or otherwise, so long as and to the extent such legal right continues to exist.

3.3 Effects of Changes in Law on Franchise Agreement. In addition to the provisions of this Article 3, in the event that future interpretations of current law, future enactments or developing legal trends limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof. While the grant contained in Section 3.1 shall not be exclusive with respect to the matters noted in Section 3.2, Contractor shall still be obligated to provide those services which may be included in the above (i.e., collection of Bulky Items) pursuant to the rates, and other terms, as set forth in this Agreement.

3.4 Acceptance and Effective Date. Contractor shall accept this franchise on the terms and conditions set forth in this Agreement, and the grant of franchise shall be effective upon the Effective Date. The prior Franchise Agreement between Contractor and City (Agreement No. 4727) as amended shall terminate upon the Effective Date of this Franchise Agreement except as otherwise expressly provided in the prior Agreement.

3.5 Franchise Area Defined. The Franchise Area granted by this Agreement shall be all residential, commercial, industrial and construction Premises as set forth herein. As provided for below, the Franchise Area may be changed by annexation.

3.6 Annexation of Territory to the City. Any territory annexed to the City shall be added to the areas covered by this Franchise Agreement subject to the provisions of California Public Resources Code Section 49520, as may be amended from time to time.

3.7 Term. This Agreement shall become effective on April 1, 2014 with collection, processing, and disposal services beginning on such date and continuing for a period of fifteen (15) years and ending on March 30, 2029 (“Term”). Nothing herein shall prevent the Parties from mutually agreeing to otherwise amend or modify the Agreement except as otherwise provided under the City’s Charter or Municipal Code.

3.8 Survival of Certain Provisions. All representations and warranties of the Parties herein, all indemnifications provided for here, and any other rights and obligations of the Parties expressly stated to survive the termination of this Agreement, shall survive such termination.

3.9 Statutory Continuation Rights. Contractor acknowledges that it is familiar with Article 3 of Chapter 4 of Part 8 of Division 30 of the California Public Resources Code, commencing with Section 49520, and that such provisions are inapplicable to the Contractor in this Agreement, To the maximum extent allowed by law, Contractor in this Agreement, Tot the maximum extent allowed by law, Contractor further agrees that if and to the extent that such provisions are deemed applicable to this Agreement, Contractor waives any rights they may afford.

3.10 Transition to Next Contractor. Upon expiration of this Agreement, if Contractor and City do not enter into a succeeding agreement, Contractor shall cooperate fully with City and the subsequent contractor(s), franchisee(s), licensee(s), permittee(s) or other Person or Persons providing services similar to the Services so as to assure an efficient, orderly, timely, and effective transition in accordance with Section 12.2.

ARTICLE 4. SERVICES

4.1 Collection and Transportation.

4.1.1 Service Standards.

A. General. Contractor acknowledges that one of the City's primary purposes in procuring Services hereunder, selecting Contractor and executing this Agreement, is to maintain the quality of Customers' waste management services. Contractor shall perform all Services in a prompt, thorough, comprehensive, reliable, courteous, and professional manner such that Customers receive high-quality Service at all times. The Services to be performed pursuant to this Agreement shall include the furnishing of all supervision, labor, materials, equipment, tools, expertise, and any other items and equipment necessary to perform the Services described in this Agreement. All Services shall be accomplished in a courteous, thorough, and workmanlike manner and adhere to the highest standards consistent with the best practice in the industry.

B. Litter. Contractor shall clean up litter in the immediate vicinity of any Solid Waste storage area, including the areas where Solid Waste Bins are placed for collection, which litter was intended to be placed in, or spilled or fell off of the Bins, whether or not Contractor caused the litter. Contractor shall discuss instances of repeated litter caused by a Customer directly with the responsible Customer and shall report such communications to City. City will assist Contractor to seek a remedy of such situation if Contractor has already attempted to do so without success.

C. Contractor shall also use due care to prevent Solid Waste from being spilled or scattered during collection and transportation. All vehicles, Bins and debris boxes shall be covered during transport to the Disposal Facility, Composting Facility, or Processing Facility. Contractor shall not transfer loads from one vehicle on any street unless the transfer is necessary due to the mechanical failure or accidental damage of a Vehicle. If any solid waste is spilled or scattered, Contractor shall immediately clean up the Solid Waste. Contractor shall be solely responsible for paying or opposing any fines assessed by the operator of a Disposal Facility, Composting Facility, Processing Facility or other regulatory body having jurisdiction for improperly covering loads or spills of Solid Waste.

4.1.2 Respect for Property.

A. Private Property. Contractor shall use due care in entering and exiting Customers' private property and enclosures. After making collections, Contractor shall close all gates opened by Contractor. Where available, Contractor shall use the paved access ways on public or private property. Contractor shall promptly repair or compensate Customer for all damage to Customer's personal property or improvements to real property caused by the actions or omissions of Contractor's employees and/or Vehicles.

B. Bins and Residential Containers. After making collections, Contractor shall return all Bins and Residential Containers to the prior location or, if necessary, to an alternate location which does not obstruct traffic or access to the Customer's property.

C. Pavement. Where Bins and Residential Containers are located on public or private property and a Customer can demonstrate, to the satisfaction of the City Engineer, or his or her designee, that a driving surface or other paved area has been damaged because: (1) a Vehicle exceeded the legal maximum weight limits established by the State, or (2) the negligent operation of a Vehicle by Contractor's employee, Contractor shall be solely responsible to promptly repair or compensate Customer for all damage to the pavement.

D. Noise. Contractor shall conduct collection as quietly as possible and shall conform to noise level regulation. Contractor will promptly resolve any noise complaints to City's satisfaction. City may conduct random checks of noise emission levels to ensure compliance herewith.

E. Scope of Regular Collection Services. Except as otherwise provided in this Contract, Contractor shall timely and fully perform Collection Services described in Exhibit D in accordance with the provisions of this Agreement. Except as otherwise provided in this Contract, Contractor shall notify the City when any refuse is not collected by Contractor. Contractor shall leave a tag, approved by City, on which is stated the reason for Contractor's refusal to collect. A duplicate copy of this notice shall be provided to the City so that the proper follow up can be accomplished to the satisfaction of City.

4.1.3 Exceptions to the Collection of Solid Waste.

A. Special Wastes. Contractor shall not be required to collect Special Wastes, including grease wastes from grease traps or grease interceptors.

B. Recyclable Materials Not Discarded by Customer. Recyclable materials belong to the Customer until set out for transfer to Contractor. Customer may dispose of such recycle materials through other appropriate means including, but not limited to, taking them to drop off facilities and donating or selling them to private or public entities.

C. Waste Not Properly Placed on Residential Containers. Contractor shall not be required to collect any solid waste that: is not placed inside a Residential Container with lid closed, has been over-loaded in Residential Containers by weight or volume; or has been compacted or otherwise placed, kept, or accumulated in a manner that the solid waste will not, of its own weight, fall out of the Residential Container in which it is placed when such Residential Container is turned upside down. In such circumstance, Contractor shall complete and leave a Non-Collection Notice securely attached to any adjacent Residential Container of Customer. The use of permanent stickers to affix a Non-Collection Notice will not be allowed.

D. Bin or Residential Container Not Placed in Proper or Safer Collection Location. Contractor shall provide Collection Services for all properly placed Bines or Residential

Containers except that Contractor shall not be required to collect any solid waste or Recyclable material from any Bin or Residential Container which is placed in a manner which would otherwise preclude the safe pickup thereof. Contractor shall complete and leave a Non-Collection Notice securely attached to such improperly placed Bin or Residential Container. The use of permanent stickers to affix a Non-Collection Notice will not be allowed.

E. **Unsafe Condition.** If Contractor determines that any condition at or near any collection location presents a health or safety threat to Contractor's employees, Contractor shall immediately notify the City Representative thereof. Upon City authorization, the Contractor may discontinue collection for any such location until the safety hazard is eliminated. Contractor shall complete and leave a Non-Collection Notice securely attached to Customers' Bin or on the door to the Customer's premises. The use of permanent stickers to affix a Non-Collection Notice will not be allowed.

F. **Hazardous Waste or Unsafe Materials.** If Contractor determines that a Bin contains Hazardous Waste or other materials that present a health or safety threat to Contractor's employees, Contractor may refuse to collect such Bin and Contractor shall notify the City Fire Department immediately. Contractor shall further notify City of this fact in its monthly report prepared pursuant to Section 7.02.a.

G. **Excess Solid Waste.** Contractor shall collect all Solid Waste in Refuse Containers regardless of whether such waste is in excess of the volume of waste subscribed to by the Customer. Contractor shall complete the disposal of all such solid waste and leave a Notice of Excess Waste and Extra Charge securely attached to Customer's Refuse Container or on the door to Customer's premises and may charge the Customer an additional fee or charge for such excess as provided in Exhibit M. The use of permanent stickers to affix a Notice of Excess Waste and Extra Charge will not be allowed.

4.1.4 Special Collection Service.

A. **City-Wide Clean-Up.** In response to the written request of the City, Contractor shall deliver and collect Roll-Off Containers at a mutually acceptable location for City-Wide use. Contractor shall provide two (2) such collection services as required in this Section 4.10.c.(1)(i) per year at no cost to City. City may negotiate a cost for additional events, beyond two, with the Contractor, or, if agreement on price is not reached, City may direct the Contractor to perform the services at the rate of compensation City deems appropriate.

These collection services shall consist of a single collection day beginning at 8:00 a.m. and ending at 2:00 p.m., unless otherwise agreed in writing by the parties. In the event the City requested such service, the City will notify Contractor in writing not less than thirty (30) calendar days prior to the date of the services requested. The notice to the Contractor will specify the date and the location(s) of the event. As part of this service,

Contractor shall provide sufficient labor, equipment, and on-site supervision during the entire clean-up even to adequately ensure the timely disposal of all Solid Waste delivered to the event and to clean the location at the conclusion of the event to the reasonable satisfaction of the City Manager. Solid Waste collected as part of this special Collection Service shall be included in the City's minimum diversion requirements.

B. City Sponsored Events. Contractor will provide refuse and recycling collection services at no additional charge for City sponsored events. Service includes providing cardboard litter boxes and recyclables containers at the events, providing bins and/or Debris Boxes for refuse and recyclables, and collection and disposing of refuse and processing recyclables collected. Service levels, duration and number of events may vary. See Exhibit N for current list of events and anticipated service demands

C. Collection From City Facilities. Contractor shall provide Solid Waste and Recycling services at no additional charge to all City Facilities and properties referenced in Exhibit O to this Agreement.

D. Commercial and Industrial Waste Audits. Contractor shall provide, at no charge, upon any Commercial Customer's request, a waste audit. The purpose of the audit shall be to identify opportunities for decreasing waste generation, increasing waste diversion at the Commercial Customer's serviced facilities, and thereby permitting Customer to modify service level to obtain lower rates. Contractor shall inform all Commercial Customers of this service through billing announcements a minimum of two (2) times per Agreement year. Contractor shall include a listing of all Customer requests for waste audits and a summary of the waste audit results for the preceding year in each annual report.

4.1.5 Frequency.

A. Commercial Schedule. Contractor shall collect Solid Waste and Recyclables at least once a week from each Commercial Customer as scheduled and noticed to the Customer. Frequency of Collection and Service Fee shall be no higher than the maximum rates permitted in Exhibit K. A copy of each signed Commercial Service Contract shall be available to the City for inspection or audit by the City Manager or his/her designee at Contractor's Local Office upon twenty-four (24) hours notice from City of its desire to review such Service Contract.

B. City Schedule. Contractor shall collect Solid Waste and Recyclables from City Facilities according to a schedule mutually agreed upon by the City and Contractor. Contractor agrees to alter regular pick up schedule at City Yard to accommodate large volumes of waste so as not to exceed the City's bin capacities. City will inform Contractor of any necessary schedule alterations at City Yard at such times when waste volumes warrant additional pickups.

C. Residential Schedule. Contractor shall collect Solid Waste and Recyclables from Residential Customers at least once a week as agreed upon by Contractor and each Residential Customer. Collections of Refuse, Recyclables, and Green Waste shall occur on the same day of the week for each Customer.

D. Holiday Schedule. City-designated holidays are as follows: Christmas Day, New Year's Day, Memorial Day, Independence Day, Labor Day, and Thanksgiving Day. Contractor shall notify Customers annually, in advanced, of the Holiday Collection schedule, which shall be approved by the City in advanced. Regularly scheduled Collection Services will resume the following week. Under no circumstances shall Contractor fail to provide solid waste collection less than once per week due to a Holiday Schedule.

E. Same Day Service. Residential, Commercial and Industrial Customers shall receive same day priority Services, upon request, for a fee to be established by Contractor as shown on the Rate Schedule Exhibit M.

4.1.6 Hours

A. Monday-Saturday. Contractor shall provide Collection Services between 7:00 a.m. and 6:00 p.m., except as follows:

B. Collection Services at all schools may begin at 6:00 a.m.

C. Commercial and Industrial Collection Services may begin at 6:00 a.m. in collection areas that do not border Residential areas. Exceptions shall be effected only upon the mutual agreement between City and Contractor.

D. Collection Services at Commercial and Industrial Premises in the downtown corridor may begin at 6:00 a.m. on days that a street closure will be in effect before 1:00 p.m. for special events, Construction activities and rights-of-way maintenance activities. All Collection Services may begin at 6:00 a.m. during the period between the Monday following Memorial Day and the Saturday following Labor Day.

E. No Sunday Pickup. Contractor shall not perform scheduled Collection Services on Sunday, except for Special Events and emergencies as determined by the City Manager.

F. Route Audits. City reserves the right to conduct audits of Contractor's collection routes. Contractor shall cooperate with City in connection therewith, including permitting City employees or agents designated by the Contract Officer to follow and monitor the Collection Vehicles during the conduct thereof.

4.1.7 Vehicles and Equipment

- A. Specifications. All of Contractor's route vehicles shall comply with South Coast Air Quality Management District ("SCAQMD") regulations for fleet vehicle emissions. The noise level generated by Collection Vehicles using compaction mechanisms during the stationary compaction process shall not exceed seventy-five (75) decibels at a distance of twenty-five (25) feet from the Vehicle measure at an elevation of five (5) feet above ground level using the "a" scale of a standard sounds level meter at slow response, or Applicable Law, whichever is more stringent.
- B. Contractor shall provide a fleet of alternative fuel, automated Collection Vehicle except as otherwise noted herein sufficient in number and capacity to perform the Services required under this Agreement. If Contractor fails, except for reasons beyond its control as provided in Section 11.3, or refuses to provide satisfactory assurances of timely and proper performance, such failure or refusal shall be considered a breach as described in Article 11.
- C. Registration, Certifications. Contractor shall register all Vehicles, except those Vehicles used solely on Contractor's premises, with the California Department of Motor Vehicles in accordance with Applicable Law. 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 the 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 each Vehicle. Contractor shall maintain copies of registration certificates and reports and shall make them available for inspection upon request by the City. Contractor shall also obtain and maintain certificates of compliance to comply with SCAQMD fleet vehicle emissions requirements.
- D. Safety Markings. Contractor shall ensure that all Vehicles bear all necessary appropriate safety features, including highway lighting, flashing and warning lights, clearance lights, and warning flags, in accordance with the requirements of the California Vehicle Code and other Applicable Law.
- E. Identification. Contractor shall ensure that its name, telephone number, and the Vehicle number shall be visibly displayed on all Vehicles in letters and figures not less than four (4) inches high on each side and the rear of each vehicle.
- F. Maintenance. Contractor acknowledges that it is important to the City that Contractor presents a professional and pleasing image. Therefore, Contractor shall maintain all of its equipment used in providing service under this Contract in a safe, neat, clean and operable condition at all times. The exterior and interior of Contractor's vehicles shall be thoroughly steam cleaned at least once a month or more often as needed to maintain a clean appearance. City Manager may inspect vehicles at any time

to determine compliance with sanitation requirements and aesthetic conditions. All Contractor's vehicles shall be repainted by Contractor at least once every three (3) years, unless the City Manager determines that repainting specific vehicles at that frequency is not necessary because the vehicle's appearance is satisfactory or unless the City Manager determines that repainting a specific vehicle earlier (due to graffiti, wind damage, etc.) is necessary to ensure that the vehicle gives the appearance of having been repainted within the preceding thirty-six (36) months. All graffiti shall be removed or painted over within forty-eight (48) hours of occurrence.

G. Truck Bodies. All truck bodies used by Contractor shall be constructed of metal, water-tight and leak proof, and shall be constructed to prevent odors and falling, leaking or spilling of Solid Waste. Each Vehicle shall carry, at all times, a broom and shovel to be used for the immediate removal of any spilled material. Each Vehicle shall also carry a fire extinguisher and first aid kit.

H. Backup Alarm. Each Vehicle used for the collecting, hauling or disposing of Solid Waste shall be equipped with an audible warning device that is activated when the Vehicle is backing up.

I. Gross Vehicle Weight Limit. No Vehicle used for the collecting, hauling or disposing of Solid Waste shall be loaded in excess of the manufacturer's gross vehicle weight rating or in excess of the maximum weight specified by the California Vehicle Code, whichever is less. Evidence of the manufacturer's name and gross vehicle weight rating shall be maintained in, or upon, every Vehicle.

J. Vehicle Maintenance Protocol. Contractor shall comply with the Vehicle maintenance protocol set forth in Exhibit F so that each vehicle operates properly and safely. The Vehicle maintenance protocol shall set forth specifications regarding Contractor's obligation to inventory its Vehicles, Contractor's replacement plan, preventative maintenance and repair program, details regarding Vehicle cleaning and Vehicle storage. The Vehicle maintenance protocol shall also provide details regarding the City's ability to inspect Contractor's Vehicle replacement and acquisition plan as well as the City's ability to inspect and test any and all of Contractor's Vehicles. Said inspections include inspections of the brake systems of each Vehicle to be used in the performance of this Agreement.

K. Bins. Contractor shall provide Bins that are clean, recently painted, and in good repair. Contractor shall repair any Bin within seven (7) days of a request from a Customer or from the Contract Officer. If the repair cannot be completed within seven (7) days, Contractor shall provide such Customer with a replacement Bin without charge.

4.1.8. Personnel.

A. General. Contractor shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the Services required under this Agreement in a courteous, safe and efficient manner.

B. Driver Licensing. Contractor shall ensure that each driver is trained and qualified in the operation of Collection Vehicles and that each has, in full force and effect, a valid license of the appropriate class issued by the California Department of Motor Vehicles. Contractor shall maintain photocopies of licenses for all Vehicle operations. Contractor shall provide suitable operational and safety training for all of its personnel who utilize or operate Vehicles or other equipment for collection or who are otherwise directly involved in collection.

C. Identification, Appearance, Conduct. Contractor shall require each driver and all other personnel who come into contact with the public to wear a uniform and to carry a suitable identification badge or card. Contractor shall use its best effort to assure that all personnel present a neat and orderly appearance and conduct themselves in a courteous manner. Contractor shall regularly train its employees in Customer courtesy, prohibit the use of loud or profane language, and instruct collection crews to perform their work as quietly as possible. If any of Contractor's employees are found not to be courteous or otherwise fail to perform the Services in the manner required hereby, Contractor shall take all appropriate corrective measures.

D. No Gratuities. Contractor shall not permit its personnel to demand, solicit, or accept directly or indirectly, any additional compensation or gratuity from Customers or any members of the public.

E. Nondiscrimination. In the performance of all work and Services hereunder, Contractor shall not discriminate against any person on the basis of such person's race, sex, color, ancestry, physical handicap, medical condition, national origin, religion, marital status, sexual orientation, or as otherwise prohibited by and in accordance with Applicable Law. Contractor shall comply with all Applicable Law regarding nondiscrimination, including those prohibiting discrimination in employment.

F. Safety. Contractor shall provide suitable operational and safety training for all of its employees who use or operate Vehicles or equipment for collection of Solid Waste or who are otherwise directly involved in such collection. Contractor shall train its employees involved in Solid Waste collection to identify, and not to collect, Hazardous Waste. Contractor shall immediately report any incident of Hazardous Waste within the City to the City. All work performed pursuant to the Agreement shall be performed in a manner which provides safety to the public and meets or exceed safety standards outlined by the California Construction Safety Orders under the State Code of Regulations (CAL-OSHA). City reserves the right to issue restraint or cease and desist orders to Contractor when unsafe or harmful acts are observed or reported to City. Contractor shall maintain its maintenance facility and yard free of hazards to persons

and/or property. Contractor shall instruct its employees to report immediately and hazardous conditions they observe within the City during the course of their work for the City.

4.2 Diversion

4.2.1 Processing

A. Facility Selection. Contractor shall transport and deliver to a Processing Facility or similar Facilities all Recyclable material collected. Such Facilities shall be Permitted under and in substantial compliance with Applicable Law. If a Processing Facility is constructed within the City during the Term of this Agreement or any extension hereof, all Recyclables and /or Solid Waste as appropriate, collected within the City pursuant to the Agreement shall be delivered to any Processing Facility that is constructed within the City.

B. Weighing and Record Requirements. Contractor shall ensure that, at a minimum, all Solid Waste and Recyclables shall be weighed upon delivery to the Processing Facility or similar Facilities, and that all weight and related delivery information (including date, time, material, type, rout and truck number) shall be recorded and maintained by Contractor during the Term of this Agreement and any extension thereof.

C. Recyclables Specifications. Contractor shall be responsible to ensure that the quality of Recyclables continues to meet the specifications agreed upon by Contractor and the Contract Officer. Contractor and Contract Officer shall meet on an annual basis to discuss the status of the effectiveness of the Solid Waste diversion program. City shall have no responsibility for the quality of Recyclables delivered by Contractor to any Facility, nor for any Recyclables rejected by an Facility, broker or other purchaser because the Recyclables do not meet specifications. Contractor acknowledges that City makes no warranty, either express or implied, with respect to the Recyclables, including by not limited to any warranty of merchantability and any warranty of fitness for a particular purpose.

D. Disposal of Residue. Contractor shall dispose of, or provide for the disposal of, any and all residue remaining from the processing of Recyclables in accordance with Applicable Law. The cost to dispose of residue shall be included in fees for Processing Facility or Facilities as the case may be.

E. Processing Fees. Contractor shall pay for processing of Recyclables at City-reviewed Processing Facilities and the disposal of residue therefrom, unless otherwise mutually agreed in writing by City, Contractor and any impacted Customer. Contractor shall not, under any circumstances, cause to be charged to City any material that was collected by Contractor or by any other person without the express prior written authorization of the Contract Officer.

F. Transformation. Contractor acknowledges that the Act requires solid waste diversion from landfill disposal and that “transformation”, as defined by California Public Resources Code Section 40201, provides for a maximum of ten percent (10%) of the average calculated per capita generation as a diversion credit towards meeting the fifty percent (50%) diversion goal. To the extent possible, Contractor shall not process by means of transformation any Recyclables targeted for collection through Contractor’s Recycling collection programs, nor shall Contractor ship, transport, deliver or otherwise make available any such Recyclables to any person for the purpose of transformation, without the express prior written authorization of Contract Officer, except for the direct hauling consistent within the maximum allowable tonnage as described in this Section 4.02b. However, if residue from any Processing Facility is disposed through transformation, Contractor will provide City with the data to support diversion credit, if any. Contractor shall make reasonable efforts to ship, transport, deliver or otherwise make available non-Recyclables for the purpose of transformation in an amount necessary for the City to receive the ten percent (10%) diversion credit for transformation. Contractor will provide City with the data to support diversion credit from transformation, if any.

G. Minimum Diversion Requirements. Contractor shall implement and operate programs that will meet the fifty percent (50%) minimum diversion requirements, as may be revised as explained in this Section 4.2, or additional goals under Applicable Law for the Contractor’s service area, based on the total weight of collected Solid Waste and measured for the period from April 1, 2013, and thereafter measured on a calendar year basis beginning January 1 of each year of the Term. The Contractor shall recycle, process, and/or market in a manner that entitles City to diversion credit as specified in California Public Resources Code, Section 41780. This diversion requirement is for fifty percent (50%) of all Solid Waste collected by Contractor under this Agreement as determined by the formula established by the California Integrated Waste Management Board. If data indicates that Contractor’s Services are not resulting in fifty percent (50%) diversion rate and if such failure is not demonstrably beyond Contractor’s ability to control or effect, Contractor shall propose and implement additional programs, with approval of City, at Contractor’s own expense to achieve the fifty percent (50%) diversion rate. Contractor agrees further that, should City fail to meet the Act’s fifty percent (50%) diversion obligations, Contractor shall indemnify City as set forth in Section 8.01b of this Agreement. The City may increase the fifty percent (50%) diversion requirement based on results of a waste characterization study performed by the City (“Waster Characterization Study”). Any Waste Characterization Study shall be performed in a manner approved by the California Integrated Waste Management Board and shall be paid for by Contractor. After reviewing the results of the Waste Characterization Study, should the City change the minimum diversion requirements, the revised minimum diversion requirements shall remain in effect for the remaining Term of the Agreement unless a subsequent Waster Characterization Study is conducted by the City.

H. If the City finds that additional programs are necessary to meet any required diversion goals, the City may require Contractor to enact additional diversion programs to meet the diversion requirements. If necessary, City and Contractor shall enter into good faith negotiations. If Agreement regarding such programs and/or rate adjustment cannot be reached, City reserves the right upon Notice pursuant to Section 12.01c, to terminate this Agreement.

I. The parties acknowledge Contractor's compliance with the Act and diversion requirements as shown on Exhibit S.

J. To the extent that the failure of Contractor to perform its obligations under this Section is the direct cause for penalties to be imposed against City, Contractor shall reimburse City for such portion of the fine attributable to such failure to perform.

4.3 Disposal

4.3.1 Disposal Facility. Contractor shall transport and deliver to a Disposal Facility and/or Transfer Station approved by City all Solid Waste, including Commercial, Industrial, City Solid Waste, and Solid Waste collected in performing emergency services which cannot be diverted. Contractor shall utilize a Disposal Facility and /or Transfer Station which result in the least expensive processing option, taking into account Tipping Fees, transportation cost, diversion provisions of the Act, and all other applicable provisions of this Agreement. City shall approve of the Disposal Facility and /or Transfer Station by designation the same after reviewing a list of potential facilities prepared by Contractor. If a Transfer Station is constructed within the City during the Term of this Agreement or any extension hereof, all Solid Waste collected within the City pursuant to this Agreement shall be delivered to any Transfer Station that is constructed within the City.

Contractor shall observe and comply with all regulations in effect as such Disposal Facility and cooperate with the operator thereof with respect to operations thereat, including directions to unload Collection Vehicles in designated areas, accommodating construction and maintenance, and Hazardous Waste exclusion programs. Contractor shall at all times operate according to safe industry practices.

4.3.2 If Contractor becomes unable to dispose of City's Solid Waste at a designated Transfer Station and /or Disposal Facility as the result of causes within its control and which could have been avoided by the exercise of due care, then Contractor shall dispose of such Solid Waste at another Transfer Station and /or Disposal Facility. Any additional transportation costs incurred in delivering the Solid Waste to the other Transfer Station and /or Disposal Facility will not be paid by Customers within the City.

4.3.3. If Contractor becomes unable to dispose of City Solid Waste at the designated Transfer Station and /or Disposal Facility as the result of causes which are beyond its control and which could not have been prevented by the exercise of due care, then Contractor shall, to

the extent it is legally able to do so, dispose of Solid Waste at another Transfer Station and/or Disposal Facility at the lowest Disposal fee then in effect at such Transfer Station and /or Disposal Facility under contracts entered into after the effective date of this Agreement which would be deemed substantially similar.

4.3.4. Contractor will promptly apply for, and diligently peruse, any amendments to permits necessary to transfer Solid Waste from City at such other Transfer Station and/or Disposal Facility if required to carry out the Section.

4.3.5. Disposal Fees. Contractor shall pay for disposal of solid waste by Contractor at a City-reviewed Disposal Facility unless otherwise mutually agreed by City and Contractor in writing. Contractor shall not, under any circumstances whatsoever, cause to be charged to City any material that was collected by Contractor or by any other person, other than solid waste collected hereunder without the express prior written authorization of the Contract Officer.

4.4. Customer Service and Public Relations.

4.4.1. Phone Access.

A. Toll-Free Number. Contractor shall also maintain a list with contact telephone numbers for at least three responsible company representatives capable of immediately addressing and responding to emergency situations outside of Phone Hours. This list shall be provided to the City's emergency dispatch, Police, fire and Public Works Departments, and the City Manager's Office.

B. Multi-lingual, TDD Services. Contractor shall at all times maintain the capability of responding to telephone calls in English, Spanish, 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. These capabilities shall be maintained for both the local telephone number and the emergency telephone number.

C. Customer Complaints and Inquiries. Contractor shall record in a computerized daily log all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and nature date and manner of resolution of complaint. Any such calls received via Contractor's answering service shall be recorded in the log and responded to no later than the following work day. This log shall be available for inspection by City during Office Hours. City requires Contractor to have an employee available to answer incoming calls during Office Hours. When incoming phone call volumes exceed that employee's ability to answer such calls, the call shall be switched to a message center.

D. All incoming calls shall be answered within a maximum of four rings. Any call "on-hold" in excess of 3 minutes shall be switched to a message center where

Contractor shall maintain information in a daily log to enable a customer service representative to return customer calls. All “call backs” shall be attempted a minimum of one time prior to 6:00 p.m. on the day of the call. If the caller is not contacted on the first attempt, Contractor shall make subsequent attempts on the next working day after the original call. Contractor shall make a minimum of three attempts within twenty-four hours of the receipt of the call. If Contractor is unable to reach the caller on the phone, Contractor shall send a postcard to the caller. All attempts to contact the caller shall be recorded on the log kept by Contractor. In addition Contractor shall provide a customer service email address to be included on all bills and newsletters. Contractor shall respond by email or telephone within 24 hours. Contractor shall designate a Customer Satisfaction Office (CSO) to City. CSO shall monitor the customer experience by random selecting daily at least 10% of customers who contacted Contractor’s office daily to solicit opinions about their experience. Opinion solicitation shall be by email or regular mail. A summary of Results of the random CSO survey shall be submitted to City monthly.

E. Office Hours. Contractor shall maintain and staff an office, open non –holiday weekdays from Monday through Friday at a minimum from 8:00 am to 5:00 pm daily. On Saturdays when collection schedules are delayed because of recognized holidays, telephones shall be staffed at a minimum from 8:00am until Noon. The office must be staffed by Contractor during weekday business hours.

4.4.2. Public Education and Community Relations

A. Community Relations. Contractor’s plan for public education and outreach, and community relations activities during the transition period to Once Weekly Service will include implementing route changes and will be reviewed by City. The Plan shall be submitted to the City Council by January 15, 2014, for Council review and approval. Upon approval by the City Council, the Plan shall be attached to this Contract as Exhibit G. Contractor shall timely and fully implement such plan. If requested by the City Manager, the billing inserts and an annual newsletter to Commercial customers, the cost of such publications shall be the responsibility of the Contractor. The City Manager shall approve all public education and outreach materials. If requested by the City Manager, the Contractor will sponsor a recycling program at specified schools and community outreach events. Any promotional materials or news releases will be developed with the approval of the City Manager and distributed by the Contractor.

B. News Media Relations. Contractor shall notify the Contract Officer by telephone, followed by email, of all requests for news media interviews related to the Services within twenty-four (24) hours of Contractor’s receipt of the request. Before responding to any inquiries, Contractor will discuss Contractor’s proposal with City.

C. Emergency Services. Contractor shall provide, or begin providing emergency services within twenty-four (24) hours of notification by City. Emergency services are

services beyond the Services specified in this Agreement and include Services needed following natural disasters such as earthquakes. Contractor shall be paid at a rate mutually agreed upon in advance between the City and the Contractor.

4.4.3. City Right to Perform Services.

A. Events. City reserves the right, which it may exercise in its sole discretion, to perform or contract for the performance of, any or all of Contractor's Service obligations, including the collection of solid waste or any portion thereof and transportation to a City-reviewed Processing Facility, or Disposal Facility, as the case may be, in the following events:

1. Contractor, due to Uncontrollable Circumstances or for any reason whatsoever, fails, or is unable for a period of 48 hours to collect and/or at any time to transport solid waste or any portion thereof to a Processing Facility, or Disposal Facility, as the case may be, selected in accordance with this Agreement;
2. Solid waste generated by Customers for which Contractor is obligated to provide Services accumulates in the City to such an extent, in such a manner or for such time that the City Manager or City Council determines that such accumulation endangers or threatens the public health, safety, or welfare; or
3. The City suspends or terminates this Agreement or any portion of Contractor's Service obligations due to an Event of Default or continuance of an Uncontrollable Circumstance.
4. Contractor shall be obligated to pay the City pro-rata fees it collects for any services performed by City under Paragraphs (1-3) of this subsection.

City has no obligation to continue providing such services and may at any time, in its sole discretion, cease to provide such Services. However, City's right to provide such Services shall continue until Contractor can demonstrate to the City's satisfaction that Contractor is ready, willing, and able to resume timely and full service or until the City can make alternative arrangements for providing solid waste services comparable to the Services in scope and price, which may include contracting with another service provider.

B. Notice. The City may give Contractor written notice that City is exercising its right to perform services, which notice shall be effective immediately.

C. Records and Reports. Upon City request, Contractor shall promptly provide City with immediate access and/or possession of Records, including those related to routing

and billing. Records are to be provided in a time period agreed upon by both Contractor and the City.

D. **Waiver of Taking Claim.** Contractor agrees that the City's exercise of rights under this section does not constitute a taking of private property for which City must compensate Contractor; and does not exempt Contractor from any indemnifications made with respect to diversion, disposal, or Services generally, which Parties acknowledge are intended to extend to circumstances arising under this Section. Contractor is not required to indemnify City against claims and damages arising from the negligent performance by City officers, employees or agents of City's rights under this section.

ARTICLE 5. MISCELLANEOUS SERVICE PROVISIONS.

5.1. **Title to Waste.** The Parties agree and intend that all Solid Waste become the property of Contractor upon being set out for collection. Without limiting Contractor's obligations to the City for Solid Waste collected by Contractor, all Solid Waste shall become the property of the owner/operator of the ultimate disposal site once such Solid Waste and Recyclables are deposited at the designated Disposal Facility or Processing Facility.

5.2 **Compliance with Law.** Contractor shall perform all Services in accordance and compliance with Applicable Law, including obtaining and maintaining throughout the Term all necessary Permits, licenses, and approvals required to perform the Services. Contractor shall show proof of such Permits, licenses, or approvals upon the request of the City. The City Manager shall have the power to establish rules and regulations relating to the accumulation, collection, recycling, disposal, and management of Solid Waste not inconsistent herewith and with Applicable Law, which the City Manager finds are reasonably necessary for enforcement hereof of Applicable Law or for preservation of the public peace, health, and safety. Contractor agrees to comply with any and all such rules and regulations, subject to adjustments in the Service Fee where the Change in Law is an Uncontrollable Circumstance. Reference to particular provisions or requirements of Applicable Law herein shall not be construed to limit Contractor's obligation to comply with all provisions of Applicable Law. In the event of any inconsistency between Applicable Law and this Agreement, the more stringent provision shall apply. Nothing herein shall be construed to relieve the Contractor of any obligations imposed by Applicable Law.

5.3 **Cooperation with Waste Studies.**

A. Upon direction by the City Manager, in the months of February, May, August, and November for any year selected by the City, Contractor shall perform a waste audit consisting of a minimum of 1000 Single Family Dwelling Units from two (2) mutually agreed upon Residential Collection routes within the City. The purpose of this audit is to determine the amount, in number of pounds, of Solid Waste generated per household by obtaining the weight of the Solid Waste delivered to the disposal site from each of the

two (2) selected routes and dividing it by the respective number of homes in each route from which Solid Waste was collected. Within fifteen (15) days following the end of each study month, Contractor shall submit a letter report to City including all the data collected and the calculations of the average pounds of solid waste generated by each Single Family Dwelling Unit. A household waste audit shall not be required in the first year following a year in which a household waste audit was performed.

B. Upon direction by the City Manager in the months of January, April, July and October for any year selected by the City, Contractor shall perform a waste audit consisting of a minimum of 25 Commercial properties within the City. The purpose of this audit is to determine the average pounds per cubic yard being generated. For the purpose of this provision, Contractor shall calculate the number of pounds of Solid waste per cubic yard by obtaining the weight of the Solid Waste delivered to the disposal site from a mutually agreed Commercial route consisting of accounts exclusive to the City and dividing it by the respective actual number of Commercial accounts from which Solid Waste was collected. Within fifteen (15) days following the end of each study month, Contractor shall submit a letter report to City generated by each Commercial account. A commercial waste audit shall not be required in the first year following a year in which a commercial waste audit was performed.

5.4. Technical Assistance. In addition, Contractor, at Contractor's sole expense, shall, upon request, provide technical assistance to Commercial subscribers. Such assistance may include but is not limited to: educational materials, workshops which promote source reduction practices at Commercial sites, and on-site waste audits which identify types of waste categories that can be reduced or recycled at a specific location.

5.5 Performance Review.

5.5.1. Time for Performance Review.

- A. Contractor's performance review shall be subject to review at the following times:
1. By Contractor's serious breach of the terms of this Agreement;
 2. As part of any review for an Extraordinary Rate Adjustment;
 3. During the fifth and tenth Contract years; and
 4. At any time such review is ordered by the City Manager.

5.5.2 Components of Performance Review. Performance Review may consist of any of the following elements:

- A. Technical Review.
1. Objective. Determine the effectiveness of the technologies employed for solid waste collection, recycling or disposal services.

2. Procedures. Conduct a review of (i) Solid Waste collection, source reduction, recycling or disposal services; (ii) The application of new technologies; (iii) The effect of legislative and regulatory changes; and, (iv) Compliance with the terms of this Agreement.

B. Service Review.

1. Objective. To assure that services are provided of satisfactory quality and effectiveness in substantial compliance with the terms of this Agreement.

2. Procedures. Conduct a review of (i) The services provided; (ii) The feasibility of providing new services; (iii) Customer complaints and Contractor's response to customer complaints; (iv) Recordkeeping; and (v) Mail-back survey of Customer satisfaction (as discussed below).

If a mail-back survey of Customer satisfaction is desired by City, City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the performance review. Any mail-back survey of Customers intended to measure Customer satisfaction shall be prepared by Contractor and approved by City and reproduced, mailed with return postage prepaid at Contractor's expense. In the event that Contractor and City fail to reach an agreement on the content of a Customer satisfaction survey, the parties will engage the services of a professional market research firm experienced with customer satisfaction surveys to prepare and conduct the survey, with the cost shared equally by the City and the Contractor.

The Parties agree that the purpose of the mail-back survey is to accurately and objectively measure Customer satisfaction with Contractor's performance. Survey instruments shall provide the respondent with a choice of "Unsatisfactory" or "Satisfactory", and space for the respondent to answer "Why" for marks of "Unsatisfactory".

Care will be given in the design of the survey instrument to determine the reason behind reports of "Unsatisfactory" performance and to differentiate between dissatisfaction with Contractor performance and dissatisfaction with policies and/or procedures determined by City or dictated by this Agreement. Surveys with responses without explanatory comments or for which such a differentiation cannot be clearly made shall be excluded from tabulation.

The Customer satisfaction survey will be distributed to a minimum of one thousand (1,000) Residential Customers, stratified by full-time occupied and part-time occupied, and at least fifty percent (50%) of Contractor's Commercial Customers, selected at random.

C. Rate Review:

1. Objective. To assure that rates charged Customers are reasonable for the services and terms and conditions of the Agreement in comparison to those in other communities within the Coachella Valley market area.

2. Procedures. Collect the service rates and service terms and conditions for Residential, Commercial and Industrial Refuse Collection, Recycling and disposal services and other distinguishing characteristics and pertinent data for the cities and

unincorporated County areas in the Coachella Valley market area taking into consideration the comparative: (i) services provided, collection standards and collection methods, (ii) Residential Customer billing methods; (iii) Commercial and Industrial billing policies; (iv) Mix of Commercial and Industrial service revenue in relation to Residential service revenue (v) cost and extent of free services providers; (vi) Amount of City Fees included in the rate and paid by service providers; (vii) current and recent diversion rates and number and quality of diversion programs; and, (viii) Other factors affecting the cost of service as may be appropriate.

D. Compliance Review.

1. Objective. To assure that Contractor is in substantial compliance with this Agreement and all other applicable provisions of law and all representations and warranties and the provisions of Article 9.

2. Procedures. Conduct a review of Contractor's performance with regard to the provisions of this Agreement and applicable laws, regulations and requirements.

E. Financial Review.

1. Objective. To measure: (i) Contractor's Financial Performance Rating in relation to an independent, measurable and objective industry standard; (ii) Contractor's accuracy of Customer billings; and, (iii) Contractor's accuracy of City Fees paid to City. The Parties agree that the Public Company Financial Performance Standard is an independent, measureable and objective measure of average management effectiveness of the three largest publicly traded firms in the industry and, for purposes of this Agreement, shall serve as the standard for determining if Contractor's Financial Performance Rating is above, below or comparable to the standard. The comparison of Contractor's Financial Performance Rating with the Public Company Financial Performance Standard shall serve as the sole measure of Contractor's financial performance and shall be the substitute for further review and/or audit of Contractor's finances.

2. Procedures. (i) Collect data and prepare the Public Company Financial Performance Standard; analyze Contractor's financial records to determine Contractor's performance in relation to the Public Company Financial Performance Standard; and make a determination regarding Contractor's performance compared to the Public Company Financial Performance Standard; (ii) Collect Contractor's Rate Schedules for the period under review; randomly select Residential, Commercial and Industrial accounts; obtain billing and payment records for the accounts selected for review; review the accuracy of Contractor's Customer billings; and (iii) Review Contractor's records and reports of Customer Billings, Disposal and Diversion activities; compute amount of City Fees due City; analyze Contractor's payment of City Fees; and, make a determination regarding the accuracy of Contractor's payment of City Fees.

F. Conduct of Performance Review. An independent consultant selected by City shall perform the performance review and the financial review component of the performance review shall be performed by a certified public accountant. Contractor

shall comply with all record and documentation requests in a timely manner. The performance review shall be completed within one hundred-fifty (150) days from the date City notifies Contractor of its intent to perform the review, and if not completed within that timeframe, the review shall be abandoned and it shall be assumed that Contractor favorably performed in all components and aspects of the review, unless otherwise agreed to by the Parties.

G. Cost of Performance Review. Contractor shall be solely responsible for the full cost of each Performance Review conducted as part of any review for an Extraordinary Rate Adjustment and during the fifth and tenth Contract years. Contractor shall deposit sufficient funds with City to pay for City's reasonable cost for such Performance Review. When a Performance Review is undertaken by City for reasons other than provided above, the full cost of conducting the review shall be borne solely by the City.

H. Rates. If the results of the financial review determine that Contractor's Financial Performance Rating is greater than the Public Company Financial Performance Standard (reflective of performance inferior to the standard) or less than the Public Company Financial Performance Standard (reflective of performance superior to the standard) for Contractor's Fiscal Year under review, a rate adjustment, effective with the next Rate Year, shall be made to Contractor's Total Annual Rate Review to bring Contractor's performance in line with the Public Company Performance Standard during the upcoming twelve (12) month Rate Year.

I. Review Procedure. Whenever a Performance Review is called for under the provisions of this Contract, a public Performance Review Hearing will be held, at least sixty (60) days in advance of the commencement date of the Performance Review. Thirty (30) days prior to the Performance Review Hearing, Contractor shall submit a report to the City Manager which may contain such information as it wishes to have considered, and shall contain the following:

1. Recommended changes and/or new services to improve City's ability to meet Diversion goals and to contain costs and minimize impacts on rates.
2. Any specific plans for provision of changed or new services by Contractor.
3. Responses to any issues that have been raised concerning Services performed by Contractor.
4. The reports required by this Agreement shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration. In addition to the above, City may request Contractor to submit other relevant performance information and reports for consideration. In addition to the above, City may request Contractor to submit any other specific information relating to its performance.

J. Performance Review Hearing. The City may conduct the performance review administratively, or, if in the opinion of the City Manager significant actions are required by Contractor affecting the Agreement, or if there would be significant public interest,

the City Manager may request review through a Performance Review Hearing held by the City Council at a public meeting. The City Manager may cause notice of the hearing to be given by publication in a newspaper of general circulation at least ten (10) days before the hearing, and shall give Contractor ten (10) days' written notice of such hearing. Contractor may submit comments or complaints during or before the Hearing, either orally or in writing. Contractor shall be present at and participate in the Performance Review Hearing.

The Performance Review Hearing may include all components of Performance Review as described herein, including obtaining new or expanded services. The City Council may use all relevant evidence produced at the Hearing and shall approve a report concerning Contractor's performance and adopt findings by Resolution. As a result of its findings following any Performance Review Hearing, 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 inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Performance Review Hearing 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 6.01. If any breach of or noncompliance is found in Contractor's performance, the provisions of Article 11 shall apply.

5.5. Service Materials Belong to City. All data, reports, documents, brochures, public education materials, and other computerized, written, printed, or photographic materials developed by City or Contractor in connection with the Services, whether developed directly or indirectly by City or Contractor, shall be and shall remain the property of City without limitation or restriction on the use of such materials by City. Contractor shall not use such materials in connection with any project not connected with this Agreement without the prior written consent of City.

5.6. Recycled Materials. Contractor shall use Reasonable Business Efforts to procure supplies and Bins with post-consumer recycled content, including paper products for all publicity, billing and other management and operational Services.

5.7. Hazardous Waste. Contractor shall implement the Hazardous Waste screening, identification, and prevention protocol attached as Exhibit H. If Contractor inadvertently delivers materials to any Processing Facility or Disposal Facility which comprise Hazardous Waste and Contractor cannot identify or fails to remove it, Contractor shall arrange for its proper disposal in accordance with Applicable Law and/or cooperate with such Facility owner or operator with respect thereto.

ARTICLE 6. CHANGE IN SCOPE OF SERVICES

6.1 Change in Scope of Services.

6.1.1. Upon City Direction. The City reserves the right to direct Contractor to implement a change in scope of Services at any time, including new or amended diversion programs or special Services, subject to adjustments, if any, of the Contractor's Service Fees by mutual agreement of the parties.

6.1.2. Upon Contractor Proposal. The Contractor may propose to the City a change in the Scope of Services, including new developments in collection, recycling, and processing technologies and techniques, whether on the collection routes or at a Processing Facility at any time, for any reason whatsoever, subject to City approval.

ARTICLE 7. RECORDS AND REPORTING

7.1. Records

7.1.1. Maintenance. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services, or performance hereunder, including routing, level of each Customer's services, inventory, maintenance logs, etc. ("Records), for four (4) years, or any longer period required by Applicable Law. Contractor shall further maintain computerized data base(s) in a computerized format compatible with the City's computer system containing a complete Customer file, including all information required for the reports specified in this Article 7 and sufficient to allow input or information for City and Contractor to reconcile diversion percentage and customer service information.

7.1.2. City Inspection and Audit. Upon Notice by the City, Contractor shall use Reasonable Business Efforts to provide copies of record to City or City's designees for inspection or audit at City Hall. Otherwise, Contractor shall make Records available to City or City's designees for inspection or audit at the Local Officer or Contractor's address indicated for receipt of Notices during Office Hours. Where City has reason to believe that Records may be lost or discarded due to dissolution, disbandment or termination of Contractor's business or other reason, City may require that Contractor give City custody of the Records and that the Records and documents be maintained in City Hall, in which event access to such Records shall be granted to City and any Person duly authorized by Contractor. Contractor shall use Reasonable Business Efforts to promptly provide the City any additional information relevant hereto which is not specified in this Article 7.

7.2. Reporting.

7.2.1. Monthly. Contractor shall prepare monthly reports in written form and in a computerized format compatible with the City's computer system, containing, at a minimum, a record of the Solid Waste Disposed Diverted. These reports shall be provided to the City at the request of the Contract Officer.

7.2.2. Annual. For each Contract Year, Contractor shall prepare and submit an operational report and management report. The reports shall be due to City within ninety (90) days following the end of Contractor's Fiscal Year. Contractor's obligation to submit an operational report and management report shall survive the termination or expiration of this Agreement. The Operational Report shall be submitted as an Excel workbook and shall include: (i) Tonnage disposed and diverted reported by Disposal or Diversion Site and allocated by Business Sector and further allocated by Customers subject to payment of fees for service and City Facility; (ii) Number of Routes allocated by Business sector and further allocated as Refuse, Recycling, Green Waste, Food Waste, Construction and Demolition Material and Special Waste. The information in the operational report shall be reported by Contractor's Fiscal Year quarter. The Management Report report shall include: (i) General information about Contractor including a list of current officers and the core group of management employees and consultants; (ii) Highlights of noteworthy issues and event; and, (iii) Highlights of public awareness activities. The annual reports to City shall be in written form and in a computerized format compatible with the City's computer system.

7.2.3. Additional Information. Contractor shall use Reasonable Business Efforts to incorporate additional information in the reports required under this Section 7.02 from the Records promptly upon Notice from City.

ARTICLE 8. INDEMNITY, INSURANCE, BONDS

8.1. Indemnification of City.

8.1.1. General. Contractor agrees that it shall protect, defend, indemnify and hold harmless City, its elected officials, officers, employees, volunteers and agents from and against any all losses, liabilities, fines, penalties, claims, damages or judgments, including attorneys' fees and costs ("Claims") arising out of or resulting in any way from City's grant of this franchise to Contractor or Contractor's exercise of the franchise including the provision of Services under this Agreement, unless (i) such Claim is due to the sole negligence or willful acts of City, its elected officials, officers, employees, agents or contractors, (ii) the City has received compensation from an insurance carrier for the full amount of such Claim, or (iii) as specified under the provisions of Section 8.01.b below concerning Hazardous Waste and/or Household Hazardous Waste.

8.1.2. Subject to the scope of this indemnification and upon demand of the City made by and through the City Attorney, Contractor shall protect City and appear and defend the City, its elected officials, officers, employees, volunteers and agents, in any Claims by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definition of "solid waste" or "Recyclable Material" or the limits of the City's authority with respect to the grant of franchises, including the process for the grant of franchises involving the collection of Commercial Solid Waste, arising out of the exercise of this Agreement by Contractor or claims by other entities disputing the rights and privileges granted

by City in this Agreement. This provision shall survive the expiration of the period during which collection services are to be provided under this Agreement. City and Contractor agree to confer following any trial to decide jointly whether to appeal, or to oppose and appeal. In the event City and Contractor jointly agree to appeal, or to oppose any appeal, City and Contractor agree to share equally in the cost of appeals. Should either City or Contractor decide to appeal, or to oppose appeal, and the other decide not to appeal, or to oppose appeal, the party which decides to appeal, or oppose appeal, shall bear all fees and costs of the appeal or the opposition to the appeal.

8.1.3. Nothing in this Section 8.01a of this Contract shall be deemed an indemnification obligation of the Contractor pursuant to Section 40059.2 of the California Public Resources Code.

8.2. Hazardous Substances Indemnification.

8.2.1. 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 City and its past and present officers, council members, employees, consultants and agents (hereinafter "Indemnified Parties") harmless from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suites, 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, 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 results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnified Party is liable, responsible or in any way obligated to investigate, assess, monitor study, test, treat, remove, remediate, or otherwise cleanup, any Hazardous Contaminant (as defined herein); or relates to material collected, transported, recycled, processed, treated or disposed of by Contractor.

8.2.2. Contractor's obligations pursuant to this Section shall apply, without limitation, to:

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

- B. 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;
- C. Any Claims based on or arising out of our alleged to be arising out of the marketing, sale, distribution, storage, transportation, disposal, processing or use of any materials recovered by Contractor;
- D. 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 Agreement.

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

F. For purposes of this Section, the term "Hazardous Contaminant" shall mean any "hazardous material" as that term is defined under California Health & Safety Code Section 25501(1); any "hazardous substance," as that term is defined herein or under California Health & Safety Code Sections 25281 (f), 25501(e), 25501.1 and under Title 42, Section 9601(14) of the United States Code; any "hazardous waste," as that term is defined under Title 42, Section 6093(5) of the Unites States Code and under California Health & Safety Code Section 25550(m); any chemical which the Governor has identified as a chemical known to the State to cause cancer or reproductive toxicity pursuant to California Health & Safety Code Section 25249.8; any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to the above-referenced statutory and regulatory provisions made before or after the date of execution of this Agreement.

G. The provisions of this Section shall not terminate or expire, shall be given the broadcast possible interpretation and shall survive the expiration or earlier termination of this Agreement. In the event the City directs Contractor to dispose of Solid Waste Collected pursuant to this Agreement at a facility designated by City, Contractor shall not be required to provide the indemnification with respect to Claims arising from allegations relating to the handling and/or disposal of such Solid Waste after it is delivered to a City designated facility (although this exception shall not apply to any other Claims relating to said Solid Waste); provided; however, this exception to the indemnification requirements that would otherwise apply shall not apply in the event the City designated disposal facility in question is either owned or operated, in whole or part, by Contractor.

8.3 AB939 Indemnification and Guarantee.

8.3.1. State Mandate. California Public Resources Code Section 41780 establishes the initial goal of diverting 25% of the City's waste from landfill facilities by January 1, 1995 and the secondary goal of diverting 50% of the City's waste by January 1, 2000 and thereafter. These goals may be modified in the future by additional legislation. If the City has failed to implement its required plans to achieve the aforementioned goals, under Public Resources Code Section 41850, the California Department of Resources, Recycling and Recovery (CalRecycle) may impose administrative civil penalties of up to ten thousand (\$10,000) per day until the City implements its plan.

8.3.2. Contractor Indemnification. Contractor agrees to indemnify and hold harmless the City, and its elected officials, officers, employees, and agents against all fines and/or penalties imposed by CalRecycle or the City: (i) based on Contractor's failure to comply with laws, regulations or permits issued or enforced by CalRecycle or the City; (ii) caused or contributed to by the Contractor's failure to perform its obligations under this Contract, including the annual diversion rate requirement. This indemnity obligation is subject to the limitations and conditions in Public Resource Code Section 40059.1; however this obligation is enforceable to the maximum extent allowable by Section 40059.1.

8.3.3. Joint Responsibilities. The City and Contractor shall jointly develop waste Diversion strategies and develop a program adequate to meet the requirements established by the State. Should City and Contractor not be able to agree on a joint program, City shall specify the program to be implemented. Contractor may protest the City's plan by identifying specific provisions with which Contractor disagrees and the reasons for that disagreement.

8.3.4. City Waste Diversion Responsibilities. The City shall cooperate with the waste diversion efforts of the cities of the Coachella Valley, and shall coordinate activities and programs to extent possible. The City shall continue to enact, administer, and enforce appropriate regulations, incentives, and sanctions necessary to encourage the participation of Residential, Commercial and Industrial Units of the City in Waste Diversion programs, including without limitation PSMC Section 6.04.270 – The City shall enforce and monitor reporting performance of Contractor to ensure compliance with the requirements of the State.

8.3.5. Contractor Waste Diversion Responsibilities. The Contractor shall cooperate with the Waste Diversion activities of the cities of the Coachella Valley, and shall coordinate activities and programs to the extent possible. The Contractor shall comply with the Waste Diversion reporting requirements established by the City. The Contractor shall cooperate with the City's efforts to develop and implement public education and information programs designed to promote Source Reduction, Recycling and Composting in general, as well as specific Waste Diversion strategies. The Contractor shall implement the strategies jointly developed and agreed to by the parties.

8.3.6. Meet and Confer Process. Contractor and City shall meet and confer periodically to monitor the effectiveness of the Waste Diversion program and its implementation.

8.3.7. Indemnification Service but only for Liabilities During Term. The indemnification described in this Section 8.01 shall be limited to Liabilities resulting from Services from and after the date thereof through the Term, it being specifically understood that any liabilities attributable to the Contractor's actions prior to the date hereof are excluded from such indemnification. However, INDEMNIFICATION RESULTING FROM SERVICES DURING THE TERM SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

8.4. Insurance.

8.4.1. Insurance Requirements. The Contractor shall, at Contractor's sole cost and expense, secure and maintain insurance acceptable to the City (Attorney and Risk Manager) in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives or employees. The Contractor shall maintain the types and amounts of insurance coverage, together with related specified deductibles, listed below and in Exhibit K or required by Applicable Law, whichever is greater.

A. Minimum Limits of Insurance. Contractor shall maintain limits of insurance no less than:

1. General Liability: \$9,000,000 aggregate and \$9,000,000 per occurrence for bodily injury, personal injury and property damage.
2. Commercial Auto Liability: \$9,000,00 per accident for bodily injury, including accidental death, and property damage that may arise from operations pursuant to this agreement.
3. Workers' Compensation and Employers' Liability Insurance: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of, at a minimum, \$1,000,000 per accident.

B. Other Insurance Provisions. The insurance required by this Agreement shall be with insurers which are Best A-rated or better. The City shall be included as an additional insured on each of the policies and policy endorsements. The Contractor shall obtain the written consent of the City's Risk Manager prior to changing insurers providing insurance under this Agreement, which consent shall not be withheld unreasonably. The following language will be made a part of all insurance policies required by this Section:

1. "The City of Palm Springs, its employees, agents, franchisees and officers are hereby added as additional insures with respect to liability arising out of activities performed by or on behalf of Contractor."
2. "This policy shall be considered primary insurance with respect to any other valid and collectible insurance the City of Palm Springs may possess including any self-insured retention the City of Palm Springs may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it."

3. "This policy shall act for each insured as though a separate policy had been written for each. This, however, will not act to increase the limit of the liability of the insuring company."

4. "Thirty (30) days' prior written notice by certified mail, return receipt requested, shall be given to the City of Palm Springs in the event of suspension, cancellation, reduction in coverage or in limits or non-renewal of this policy for whatever season. Such notice shall be sent to the City Manager, City Attorney and City Clerk."

8.4.2. **Adjustment in Amount of Insurance.** In the event the City's Risk Manager determines that the Services under this Agreement create an increased or decreased risk of loss to the City, Contractor agrees that the minimum limits of the insurance policies required by this Section may be changed accordingly upon receipt of written notice from the City's Risk Manager; provided that Contractor shall have the right to appeal a determination of increased coverage to the City Council of City within ten (10) days of receipt of notice from the City's Risk Manager.

8.4.3. **Reduction of CERCLA and Other Liability.** City and Contractor agree to meet annually in the second calendar quarter of each calendar year to discuss ways to reduce their respective potential CERCLA and other liabilities to third parties.

8.5. **Performance Bond.** Prior to the Effective Date of this Agreement, Contractor shall secure and throughout the Term maintain full force and effect a performance or surety bond to guarantee and assure the timely and complete performance of Services in an amount no less than Two Hundred Fifty Thousand Dollars (\$250,000) fully prepaid and renewable for each Contract Year. Contractor shall ensure that the bonding Contractor provides the City with notice of non-renewal within ten (10) days of any non-renewal. Such bond shall be in substantially the form for commercial blanket bond form attached as Exhibit L, naming the City as obligee and providing at least thirty (30) days prior to notice of any cancellation. Contractor shall procure such bond from underwriters approved by the City Manager, licensed in California, rated not less than "A-7" by A.M. Best Contractor, Inc. The form of the bond and the surety are subject to the approval of City's Risk Manager and the City Attorney. The condition of the performance bond shall be such that if Contractor shall well and truly perform the covenants, promises, undertakings, and obligations contracted by Contractor to be performed under this Agreement, then the obligation of the bond shall be void; otherwise it shall remain in full force and effect. Said bond shall terminate and be canceled upon the completion of the Term, as may be extended pursuant to the provisions of this Agreement. City shall execute and deliver to Contractor or Contractor's surety Contractor promptly upon Contractor's completion of all of Contractor's obligations under this Agreement such certificates or other documents as either of them may reasonably request for the purpose of terminating and canceling such performance bond by no later than thirty (30) days after the end of the Term.

8.6. Letter of Credit. As an alternative to such performance bond, at City's option, Contractor may deposit with City a fully prepaid, irrevocable letter of credit for at least the duration of the Contract Year for which the letter of credit is deposited in the same amount as such performance bond. The form of the letter of credit and the issuer of the letter of credit are subject to approval of the City Manager and the City Attorney. Nothing herein shall in any way obligate City to accept a letter of credit in lieu of the performance bond.

8.7. Financial Guaranty Agreement. As of the date hereof and throughout the Term, Contractor shall ensure that its parent corporation or its successors or assigns acceptable to the City shall execute and maintain a legal, valid, and binding Financial Guaranty Agreement.

ARTICLE 9. CRIMINAL ACTIVITY OF CONTRACTOR.

Contractor has represented that none of its officials or directors have a criminal conviction from a court of competent jurisdiction with respect to conviction for any crime, including racketeering, which indicates a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the Contractor or its officers or directors; nor had the Contractor or any of its respective officers or directors made an admission of guilt or pled nolo contendere to the conduct described above. Should the contractor or any of its officers or directors have a criminal conviction from a court of competent jurisdiction with respect to conviction for any crime, including racketeering, which indicates such a lack of business integrity or business honesty that seriously and directly affects the present responsibility of the Contractor or its officers or directors; or should the Contractor or any of its representative officers or directors make an admission of guilt or pled nolo contendere to the conduct described in this subsection above, which is a matter of record, then each employee, officer, or director, as the case may be, of the Contractor responsible for such proscribed conduct shall be promptly terminated and/or replaced. Contractor shall have fifteen (15) days' notice and opportunity following such conviction to present evidence in mitigation thereof, and on and after such fifteenth day, if such employee, officer, or director is not promptly terminated or replaced, the City reserves the right to unilaterally terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions, or any other condition deemed appropriate short of termination) as it shall deem proper.

Article 10. SERVICE FEES

10.1 Contractor Service Fee. The Contractor shall receive payment, for services rendered under this Agreement as compensation for performing Services or a portion thereof. Service Fees shall be determined in accordance with rates set by Contractor for the provision of the level of service agreed to by the Customer and Contractor, provided that Contractor's rates shall not exceed the maximum rates permitted as set forth in Exhibit M. Contractor shall establish and publish its standard rates for all categories of services. Contractor shall not give preferential treatment and shall consistently charge rates for all Customers in each service category.

10.2. Recyclables Revenue. The Contractor shall retain all of the revenue earned from the sale of Recyclables.

10.3. Contractor Payment to City. Contractor shall make payment to the City of a Franchise Fee, Administration Fee, the State Administration Fee, and Diversion Facility and Sustainability Fee.

10.3.1. Franchise Fee. Franchise Fees shall be calculated as a percentage of revenues derived from services rendered, at the percentage of three point sixty nine percent (3.69%) of all revenue from residential services, nine point twenty-one percent (9.21%) of all revenue from commercial services, and eight point ninety-seven percent (8.97%) of all revenue from industrial services. Revenue derived from services rendered includes all hauler fees (service and recycling) but does not include revenue from Compensable Overhead Costs or the sale of Recyclables.

10.3.2. City Administration Fee. City Administrative Fees shall be calculated as a percentage of revenues from services rendered, at the percentage of three point sixty nine percent (3.69%) of all revenue from residential services, three point twenty-nine percent (3.29%) of all revenue from commercial services, and three point twenty-two percent (3.22%) of all revenue from industrial services. Revenue derived from services rendered includes all hauler fees (service and recycling) but does not include revenue from Compensable Overhead Costs or the sale of Recyclables.

10.3.3. State Administration Fee. Pursuant to California Public Resources Code Section 41902, City may directly assess fees or may arrange for the fees to be collected by the Contractor under this Agreement to pay for its source reduction and recycling element pursuant to the Act. Contractor agrees to pay or collect, as the case may be, a State Administration Fee as set forth on the Schedule of Maximum Rates, attached as Exhibit M. State Administration Fee payments shall be based upon the rate of two dollars and seventy-eight cents (\$2.78) per ton on all Solid Waste tonnage disposed at a Disposal Site exclusive of tonnage generated by City Facilities and collected in debris boxes and compactors or at such other rate as the City Council may adopt by resolution.

10.3.4. Diversion Facility and Sustainability Fee. Diversion Facility and Sustainability Fee payments shall be based upon the rate of eight dollars and fifty cents (\$8.50) per ton on all Solid Waste tonnage disposed at a Disposal Site exclusive of tonnage generated by City Facilities and collected in debris boxes and compactors or at such other rate as the City Council may adopt by resolution.

10.4. Payment Certification. Each payment shall be accompanied by the following certification which shall be executed by an officer of the Contractor: "I hereby certify that the foregoing statement of the payment to the City is made by me, that I am authorized to make such payment of the amount of the payment due, and that to the best of my knowledge and belief, the amount of the payment is true, correct and complete."

10.5 Payment Due. Any payments to City pursuant to this Section 10.03 shall be payable by Contractor to City thirty (30) days after the close of each quarter of Contractor's Fiscal Year and shall be based on all Service Fees received from Customers during the preceding quarter.

10.6. Adjustment of Fixed Fees. The fixed fees provided above for the State Administration Fees and the Diversion Facility and Sustainability Fees may be adjusted from time to time by the City based upon a review of the City's actual cost to conduct such program. Any adjustment approved hereunder must be approved pursuant to the Performance Review Hearing process established in Section 5.04. Any adjustments shall be incorporated in the maximum rates set forth in Exhibit M.

10.7. Acceptance and Audit. No acceptance by City of any payment shall be construed as an accord that the amount is in fact 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 Agreement. All amounts paid shall be subject to independent audit and recomputation by City. If, after audit, such recomputation indicates an underpayment of less than three percent (3%), 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 audit, such recomputation indicates an underpayment of equal to or more than three percent (3%), Contractor shall reimburse City the amount of the underpayment and for all reasonable costs and expenses incurred in connection with the audit and recomputation within thirty (30) days of receipt of written notice from City that such is the case. If, after audit, such recomputation indicates an overpayment, City shall notify the Contractor in writing of the amount of overpayment, less costs and expenses incurred in connection with the audit and recomputation. Should an overpayment be found, Contractor shall offset the payment of payments (as appropriate) next due following receipt of notice of overpayment by the amount specified in such notice.

10.8. Adjustments. The Maximum Service Fees set forth in Exhibit M, shall be adjusted as follows.

10.8.1. Changes in Scope of Service. The City may allow adjustments of the Maximum Service Fee for Changes in the Scope of Services as specified in Article 6 of this Agreement.

10.8.2. Formula Adjustment. The Maximum Service Fees provided for in Section 10.01 and specified in Exhibit M shall be adjusted based upon the percentage change in the Consumer Price Index for All Urban Consumers (CPI-U), for the Los Angeles-Riverside-Orange County area as published by the United States Department of Labor, Bureau of Labor Statistics for period February to February subject to the notices, effective dates, exceptions and procedures of this Section 10.04, except the adjustment authorized herein shall not exceed six (6) percent in one year.

10.8.3. Rate Adjustment Notice. Contractor shall provide notice to City Manager not later than March 31 of each applicable year of the amount of the applicable adjustment and a revised Exhibit M reflecting the new rates to become effective the succeeding July 1, together with such supporting data and analyses as is necessary for City Manager to verify the accuracy of Contractor's computations. Within sixty (60) days of receipt of Contractor's proposed rate adjustment notice, City Manager shall advise Contractor if City Manager believes Contractor's proposed rate adjustment is correct or incorrect. Contractor shall provide thirty (30) days' notice to Customers of all rate increases.

10.8.4. Effective Date and Amount of First Adjustments. The effective dates and amount of the first formula adjustments shall be subject to the following:

A. Residential and Commercial Service Fees. Maximum Service Fees for Residential services shall remain fixed until July 1, 2015 except that Contractor shall be entitled to an adjustment in rates to compensate for any increase in Tipping Fees as provided in subsection f of this Section. Commercial services rates will be subject for adjustment on July 1, 2014. Adjustments for subsequent years shall be made each July 1 based upon the actual changes in the CPI-U as measured for the preceding twelve-month period February to February. In the event that the actual adjustment as calculated pursuant to this Section 10.8 is less than or equal to six percent (6%), Contractor shall follow the procedure specified in Section 10.8.

B. Should the formula adjustment result in a change of more than six percent (6%), Contractor may elect to accept a six percent (6%) adjustment which shall become effective July 1, after notice to City Manager in accordance with the provisions of Section 10.04.c above, or may submit a request not later than March 31 for a review of the change in rates by the City Council. The City Council may approve the request or undertake a review and determination of appropriate rates. The City Council's determination may range from no increase to the full formula adjustment requested by Contractor. The decision of the City Council shall be binding. In making its review and determination the Council may consider all prior rate increases, the effect of all disposal Fee increases, Recycling Surcharges and any other increased charges, and the cumulative effect of all such increases in setting the rate adjustment. The City Council shall consider whether the cost is unusual, whether the amount requested is warranted, whether the Contractor is not otherwise adequately compensated by the other rates and charges provided for in this Agreement, whether the Service Fees in Palm Springs is commensurate with surrounding communities, whether Contractor is making a fair return on its investment, and whether the increase is otherwise warranted. The Contractor must give notice of the proposed rate increase and its effective date to affected Customers at least thirty (3) days in advance and shall publish the request for rate increase and the date for Council review of the rate adjustment request in newspaper of general circulation.

C. Industrial Service Fees. Maximum Service Fees for Industrial services will be subject to adjustment on July 1, 2014 based upon the change in the CPI-U formula for the period February 2013 through February 2014. Contractor shall adjust Industrial Service Fees by the full amount of the change in the CPI-U formula without the six percent (6%) restrictions applicable to Residential and Commercial Service Fees in Section 10.04.d.1. Contractor shall follow the rate adjustment notice procedure of Section 10.04.c.

10.8.4. Time of the Essence. The Contractor and City recognize that time is of the essence whenever a review of rates is undertaken. Any request of the Contractor for an adjustment of the Service Fees not acted upon by the City Council prior to July shall automatically become effective on July 1 provided the request is consistent with the formula adjustment specified in this Section 10.04 and provided that said request is submitted to City Manager prior to March 31. Reviews and approvals required under this Section 10.04 shall not delay the effective date unless expressly agreed to by both parties.

10.8.5 Tipping Fees and Diversion Facility and Sustainability Fees. Tipping Fees and Diversion Facility and Sustainability Fees are specifically excepted from the CPI-U formula adjustment provided for in this Section 10.04. Adjustments to Tipping Fees shall be made based on upon the change in the Tipping Fee levied by the operator of the Disposal Facility and/or Transfer Station and shall become effective concurrent with the effective date of the change in the Tipping Fees; provided, however, that no change in Tipping Fee shall become effective until Contractor has given thirty (30) days' notice to all Customers.

10.8.6. At its sole election, City may use all or a portion of the Diversion Facility and Sustainability Fee to offset the cost a Tipping Fee increase resulting from Contractor's use of a designated Transfer Station.

10.9. Extraordinary Rate Adjustments. Contractor may request an adjustment to Maximum Service Fees at reasonable times other than that allowed in Section 10.4 in the event of extraordinary changes in the cost of providing service under this Agreement.

10.9.1. Changes Included. Changes in the cost of providing service considered extraordinary include but are not limited to:

A. Changes in Law. Changes in law or regulations enacted after the effective state of this Agreement by Federal, State or local regulatory agencies including amendment of Section 6.04 of the City's Municipal Code.

B. Extraordinary Costs. Changes in operating costs brought about by unforeseen circumstances beyond the control of the Contractor.

C. Disposal Facility, Transfer Station, or Processing Facility. Contractor's proposal assumed the use of facilities both within and outside the immediate area. Within the immediate area, the Contractor's proposal assumed the use of the Transfer Station at

the Edom Hill Landfill site or in Palm Springs along the Interstate 10 Highway corridor for Disposal of Refuse in the County of Riverside waste management system and for processing Green Waste, SA Recycling, Thousand Palms for processing of Green Waste, concrete and metal, and Desert Recycling, Inc., Thousand Palms, for processing concrete, asphalt, wood, and miscellaneous demolition materials.

Outside the immediate area, Contractor's proposal assumed the use of Agua Mansa Material Recovery facility, Riverside, for processing of Recyclables, and Coachella Valley Composting Facility, Coachella for processing of Food Waste and Green Waste.

Should a temporary or permanent change in the location of the Disposal Facility or Transfer Station occur, Contractor and City shall meet to negotiate adjustments to compensation to offset the increases or decreases to operating expenses, if any that Contractor did or will incur as a result of the change in location. To the extent possible, providing thirty (30) days' notice has been provided to Customers, changes in Service Fees shall be concurrent with the effective date of the change in Disposal Facility or Transfer Station location.

D. Clean Fuel Requirements. Compliance with SCAQMD Rules and/or California Air Resource Board emission standards for collection Vehicles that become effective on or after the Effective Date of this Agreement.

E. Value of Recyclables. Change in the value of Recyclables from the values assumed by Contractor's proposal.

10.9.2. Changes Excluded.

A. Clean Fuel Requirements that became effective prior to the Effective date of this Agreement. Such costs are assumed to have been incorporated in Contractor's proposal.

B. Value of Recyclables. Change in the value of Recyclables from the values assumed by Contractor's proposal.

C. Inaccurate Estimates. Inaccurate estimates assumed by Contractor of its proposed cost of operations.

D. Unionization. Changes in the cost of providing service due to unionization of the work force or a change in wage rates or employee benefits.

10.9.3 Request and Review. For each request for an extraordinary rate adjustment to the Maximum Service Fees that Contractor may charge Customers brought pursuant to this Section 10.04.g, 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. City shall review the Contractor's request and, in City's sole judgment and absolute, unfettered discretion make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. Any adjustment approved hereunder must be approved pursuant to the Performance Review Hearing process established in Section 5.04.

10.10 Contractor Billing.

10.10.1 Contractor Preparation and Administration. Customers may be billed for Solid Waste Collection Services in accordance with the billing frequencies specified in Exhibit M. Contractor shall calculate each Customer's bill for Solid Waste Collection Service based on the Customer's Service requirements, which shall not exceed the rates agreed to between the Customer and the Contractor and as specified in the Service Contract. Contractor shall itemize or identify all service charges on the Customer's bill.

10.10.2. Contractor Mailing. Contractor shall incorporate with the billing such additional information as required by the City, including Contractor's telephone number for Customers to call with questions and/or disputes on solid waste Collection Service billing and shall enclose flyers or other notices provided by the City to Customers as required hereunder either by mail or electronically, depending on Customer's billing arrangements. Contractor shall mail bills substantially in accordance with the billing policy and rules of the Contractor and approved by the City. Contractor shall train Contractor employees in maintaining records of payments, delinquencies, late charges (if any), as well as promptly responding to billing inquiries and resolving billing disputes. Service bills shall be mailed by the Contractor no later than ten (10) days following the last day of Contractor's billing cycles.

10.10.3. Data Base. Contractor shall maintain solid waste Collection Service billing accounts and records in accordance with Article 7.

10.10.4. Billing Disputes. Contractor acknowledges that it shall be solely responsible for mailing out bills, and the City shall not be responsible for taking initial Customer's calls with respect to solid waste Collection Service billing inquiries or disputes. In the event Contractor cannot resolve a dispute to Contractor's or Customer's satisfaction, Contractor shall refer dispute to City Designated Ombudsman to assist in resolving the issue(s).

10.10.5. Delinquent Accounts. Contractor shall not discontinue service to Customers that do not pay for services rendered. City agrees to handle the collection of delinquent accounts as a lien on the property collected on the tax bill.

A. Each year, prior to the delinquent account public hearing, Contractor shall submit a preliminary list to the City of each premises delinquent in the payment of fees for services provided by Contractor under this Agreement. Premises eligible to be included on the preliminary list include Residential premises three (3) or more billing cycles (nine months) delinquent in the payment of Service Fees and premises receiving Commercial

or Industrial services that are two or more billing cycles past due in the payment of Service Fees. Said list shall include the property address, county assessor's parcel number, name of property owner(s) and amount delinquent. The amount delinquent shall be the amount owed the Contractor including late fees, plus twenty percent (20%) of the unpaid amount for administration and handling of which one-half (1/2) will be retained by the City.

B. City shall conduct a public hearing as provided for by statute and shall cause the delinquent fees to be placed upon the property tax bill for collection as a lien. Following the Public Hearing, Contractor shall prepare a final delinquent list and submit this list to the City prior to each July 15 in a format acceptable to the County for processing.

C. Within thirty (30) days of receipt of each tax bill installment payment from the County, City shall pay Contractor, less applicable Franchise Fees and a ten percent (10%) administrative charge, the funds collected from delinquent properties. Promptly upon receipt from the County, City shall provide Contractor with a listing of each property for which payment is being made, together with the amounts collected, Franchise Fees and administrative charge withheld and the amount remitted for each account.

D. Contractor shall be entitled to collect late charges at a rate of one and one-half percent (1.5%) of the unpaid balance including unpaid late charges.

10.11. Disputes.

10.11.1. Customer Notice of Dispute. If Customer disputes any amount calculated in good faith by Contractor, Customer shall pay the undisputed amount and give Contractor Notice of such dispute within fifteen (15) days of receipt thereof, together with any request for additional information, identified with reasonable specificity, with respect thereto.

10.11.2 Contractor's Response. Within seven (7) days of receiving the Customer's Notice, the Contractor shall respond to Customer's dispute and supply any requested information. If the Contractor does not respond within such time, Contractor will be deemed to concur with Customer. If Contractor concurs or is deemed concur, it shall promptly amend the disputed invoice.

10.11.3. Dispute Resolution. If Customer disagrees with Contractor's response and Customer and Contractor cannot reach agreement during an ensuing fifteen (15) day period following the Contractor's response, the Parties may submit the matter for determination to the City Designated Ombudsman. If the issue remains unresolved the Parties may submit the matter for determination to the City Manager.

ARTICLE 11. BREACHES, DEFAULTS AND REMEDIES.

11.1. Failure to Perform – Events of Default

Each of the following shall constitute an event of default (“Event of Default”) hereunder:

11.1.1. Service Defaults:

A. Missed Collections: Contractor fails to make at least ninety-nine percent (99%) of the gross number of scheduled solid waste collections in any Contract Year, including collection within twenty-four (24) hours (Sundays and holidays excepted) of telephone or other Notice thereof to Contractor, subject to exceptions in Article 4.

B. Breach of Agreement: Contractor fails or refuses to perform any of its obligations hereunder after the City notifies Contractor that a specific failure or refusal has occurred which will, unless corrected, give the City a right to terminate this Agreement in accordance with this Article; and the Contractor does not correct such breach within twenty (20) days of receiving the City’s Notice thereof; provided that if such breach is not capable of cure within said twenty (20) days, Contractor shall promptly provide City Notice explaining why Contractor believes it needs additional time to effectuate a cure together with a schedule therefore, and shall diligently proceed to cure the breach within such schedule, whereupon City, in its sole discretion, may accept Contractor’s schedule of cure, make a written demand that Contractor cure the default within an alternative time period set by City, or terminate this Agreement at the end of the twenty (20) day period.

C. Failure to Comply with the Law: Contractor fails to comply with Applicable Law within five days’ Notice of violation thereof.

D. Failure to Deliver Materials to Designated Facility: Contractor fails to deliver waste to a Disposal Facility or Recyclables to a Processing Facility, selected in accordance with Article 4 on more than two (2) instances).

E. Criminal the Activity: The occurrence of any conduct prescribed in Article 9.

F. Failure to Comply with Service Standards: Contractor fails to comply with the service standards set forth in Section 4.01.a.

11.11.2. Performance Assurance Defaults:

A. Failure to Provide Performance Bond, etc.: Contractor fails to provide insurance, a performance bond or guaranty in accordance with Article 8.

B. Failure to Provide Assurances of Performance: Contractor fails to timely provide assurance of performances in accordance with Section 11.09.

11.1.3. Monetary Payment Default:

A. Failure to Pay Damages: Contractor fails to pay City any amount necessary to compensate City for any damages suffered by the City within thirty (30) days following City's written statement explaining the nature of the damages and requesting payment therefor.

B. Contractor fails to pay any other monetary amount due hereunder, other than monetary damages stated above, within ten (10) days of the due date hereunder.

C. Sale, Transfer, Assignment: Contractor sells, transfers or assigns its stock, assets and/or this Agreement without City approval required by Article 15.

D. Seizure Attachment: Any Bin or Vehicle is seized, attached, or levied upon (other than a pre-judgment attachment) so as to substantially impair Contractor's ability to timely and fully perform Services, and said seizure or attachment cannot be released, bonded, or otherwise lifted within forty-eight (48) hours, excepting weekends and holidays.

E. Insolvency, Bankruptcy, Liquidation: Contractor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidation, assignee (other than as part of a transfer of Service Assets no longer used to provide Services or backup Services), trustee (other than as security of an obligation under a deed of trust), custodian, sequestrator, or administrator (or similar official) of Contractor for any part of Contractor's operating assets, or orders the conclusion or liquidation of the affairs of the Contractor.

F. False Representations; Breach of Representations or Warranties: Contractor makes a representation or warranty herein, including in Exhibit B, which is materially untrue as of the date thereof. Contractor makes a representation or fails to make a disclosure, whether within this Agreement or otherwise, to the City in connection with or as a material inducement to entering into this Agreement or any future amendment hereto, which representation or failed disclosure was false or misleading in any material respect when made.

11.2. Breaches and Defaults Excused

11.2.1 Performance Excused. Neither Party shall be deemed in breach or default of its duties, obligations (other than a payment obligation at the time due and owing), responsibilities or commitments hereunder to the extent that such breach or default is due to an Uncontrollable Circumstance, provided such Party exerted Reasonable Business Efforts to prevent the occurrence and mitigate the effects of such Uncontrollable Circumstance.

11.2.2. Notice. The Party experiencing an Uncontrollable Circumstance and relying thereon shall give immediate Notice thereof to the other Party, including describing performance hereunder for which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the extent Services may be curtailed; any requests or suggestions to mitigate the adverse effects of such Uncontrollable Circumstance; or any consequent adjustment that may be required in the Service Fee. An Uncontrollable Circumstance will not be deemed to have commenced or be excused, until the date upon which the City receives written notice pursuant to this Section.

11.2.3. City's Rights. Notwithstanding that Contractor's failure to timely and fully provide Services due to Uncontrollable Circumstances does not constitute an Event of Default, City shall nevertheless retain the right to perform such Services itself in accordance with Section 4.07, and following the continuance of such failure for thirty (30) days, shall have the option, in its sole discretion, to terminate the Agreement as provided in this Article.

11.3. Interest.

Any sum to be paid pursuant to the terms of this Agreement not paid when due shall bear interest from and after the due date until paid at a rate equal to the prime interest rate published by the Wall Street Journal plus three percent.

11.4. Remedies Upon Default.

Upon Occurrence of an Event of Default, City shall have the following rights:

11.4.1. Termination: To terminate this Agreement or any portion of the Contractor's Service obligations and obtain damages for Contractor's breach.

11.4.2. Suspension: to suspend the Agreement for a period not to exceed thirty (30) days.

11.4.3. City Right to Perform Services: To utilize Contractor's equipment, Vehicles and other property necessary or useful in the collection of Solid Waste and to use such property at the expense of Contractor to collect that Solid Waste which Contractor would otherwise be obligated to collect pursuant to this Agreement pursuant to Section 4.07, without payment for such use by City to Contractor.

11.4.4. All other Available Remedies. Contractor acknowledges that City's remedy of damages for a breach hereof by Contractor may be inadequate for reasons including:

A. The urgency of timely, continuous and high quality solid waste management Service hereunder, including collection, transportation, and/or transfer for disposal of putrescible wastes which constitute a threat to public health;

- B. The lengthy time period and significant investment of money and personnel (both City staff and private consultants, including engineers, procurement counsel, City peers and elected City officials) required to request and evaluate qualifications and proposals for alternative service comparable to Service provided hereunder for the price provided hereunder, and to negotiate new agreements therefore;
- C. The City's reliance on Contractor's technical solid waste management expertise;
- D. The City's reliance on Contractor's established relationships with owners and/or operators of Processing Facilities, Disposal Facilities, and Recyclables brokers and purchasers; and
- E. The City's obligation to repay municipal obligations, regardless whether it secures Contractor's performance hereunder.

Consequently, City shall be entitled to all available equitable remedies, including specific performance and other injunctive relief.

11.4.5. Remedies Not Exclusive. Each Party's rights and remedies in the event of the other Party's breach and default hereunder are not exclusive. A Party's exercise of one such remedy is not an election of remedies but shall be cumulative with any other remedies hereunder.

11.5. Waivers.

11.5.1 City Waiver of Breach. City's waiver of any breach or Event of Default shall not be deemed to be a waiver of any other breach or Event of Default, including ones with respect to the same obligations hereunder. Any City decision not to demand liquidated damages under Section 11.01 shall not be deemed a waiver of any Contractor breach here under. City's subsequent acceptance of any damages or other money paid by Contractor, including liquidated damages, shall not be deemed to be a waiver by City of any pre-existing or concurrent breach or Event of Default.

11.5.2. Contractor Waiver of Defenses. Contractor acknowledges that it is solely responsible for providing Services and hereby irrevocably and unconditionally waives defenses to the payment and performance of its obligations hereunder based upon failure of consideration; contract of adhesion; impossibility or impracticability of performance; commercial frustration of purpose; or the existence, non-existence, occurrence, or non-occurrence of any foreseen or unforeseen fact, event or contingency that may be a basic assumption of Contractor with regard to any provision hereof, subject to the occurrence of an Uncontrollable Circumstance.

11.5.3. Jurisdiction; Venue. The Parties shall bring any lawsuits arising out of this Agreement in State of California courts, which shall have exclusive jurisdiction over such

lawsuits. The Parties agree that venue is made in and will be performed in courts in Riverside County. Parties further agree that the site of any other hearing or action of whatever nature or kind regarding this Agreement, shall be conducted in Riverside County.

11.5.4. Costs. Contractor agrees to pay to the City all fees and expenses reasonably incurred by or on behalf of the City while enforcing payment or performance of Contractor's obligations hereunder if such non-payment or non-performance results in an Event of Default by Contractor.

11.5.5. Assurance of Performance. If Contractor is the subject of any labor unrest and appears, in the reasonable judgment of City, to be unable to regularly pay its bills as they become due; or is the subject of a civil or criminal judgment or order entered by a federal, state, regional, or local agency for violation of an environmental or tax law, and the City Manager believes in good faith that Contractor's ability to timely and fully perform Services has thereby been placed in substantial jeopardy, the City may, at its option and in addition to all other remedies it may have, demand from the Contractor reasonable assurances of timely and full performance hereunder. If Contractor fails or refuses to provide such reasonable assurances by the date required by the City, such failure or refusal shall constitute an Event of Default.

ARTICLE 12. SUSPENSION OR TERMINATION

12.1 City right to Suspend or Terminate.

12.1.1. Termination Events. City shall have the right to terminate this Agreement in whole or by directing Contractor to cease performing any portion or item of its Services listed in Exhibit D, in part, in the following events:

- A. Contractor Default: The occurrence of an Event of Default.
- B. Uncontrollable Circumstances: The occurrence and continuance of an Uncontrollable Circumstance which results in the Contractor's inability to perform for more than fourteen (14) days.
- C. Non-Severable Provisions: Any clause, sentence, provision, subsection, Section or Article hereof or Exhibit hereto shall be ruled invalid by any court of competent jurisdiction but is not severable herefrom. The Contract Officer shall make the determination of whether a provision is non-severable. A "non-severable" provision is one without which the parties would not have entered into the Agreement.

12.1.2. Suspension Events. City shall have the right to suspend this Agreement, in whole or in part, upon the occurrence of an Event of Default; provided such suspension is for no longer than thirty (30) days, during which period the Contractor shall have the opportunity to demonstrate to the satisfaction of the City that the Contractor can once again fully perform

Services, in which event City's right to suspend or terminate the Agreement shall cease and Contractor may resume its Performance Obligations.

12.1.3. Notice. City shall give Contractor Notice of Termination, which shall be effective forty-five (45) days thereafter; provided that such termination shall be effective immediately in an Event of Default which endangers public health, welfare, or safety. City shall give Contractor Notice of the suspension, which shall be effective immediately.

12.1.4. Suspension, Termination of a Portion of Performance Obligations: In the event the City suspends a portion of this Agreement or terminates a portion of Contractor's obligations under this Agreement, Contractor shall continue to fully perform its obligations under the remaining portions hereof which are not suspended or terminated. Contractor agrees to adjust the Service Fee in the event that costs are reduced by the suspension or termination of a portion of the Contractor's performance obligations contained herein.

12.2. Contractor's Obligations Upon Termination.

12.2.1. Pay Outstanding Damages. Contractor shall pay City any damages accrued and payable during the then-current Contract Year or portion thereof which would have otherwise become payable. CONTRACTOR'S LIABILITY FOR SUCH PAYMENTS SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT. SUCH OBLIGATIONS OF CONTRACTOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12.2.2. Cooperation During Transition. In the event Contractor is not awarded an agreement to continue to provide Services following the expiration or earlier termination of this Agreement, Contractor shall cooperate fully with City and any subsequent contractor(s) to assure a smooth transition of Services described in this Agreement, including transfer of any Records needed to perform the Services (including computer data, files and tapes), such as complete route maps, vehicle fleet information, days of Services information, Customer service levels and Customer billing lists; provision of other reports and data required by this Agreement; and coordination with City and any subsequent contractor(s). SUCH OBLIGATIONS OF CONTRACTOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

12.2.3. Temporary Extension of Services. If City determines to conduct a competitive bid process to provide for Solid Waste Collection Services after the expiration of this Agreement, Contractor agrees to continue to provide services hereunder on a month to month basis until the contract for such services is awarded, provided that Contractor has been permitted to fully participate in such competitive bid process and even though such contract is not awarded to contractor. SUCH OBLIGATIONS OF CONTRACTOR SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE 13. THE PARTIES.

13.1. Contractor is an Independent contractor engaged by City and not as an officer, agent, servant, employee or partner of City, nor as a joint venture with City. No employee or agent of Contractor shall be deemed to be an employee or agent of City. Contractor shall have the exclusive control over the manner and means of performing Services and over all persons performing Services. Contractor shall be solely responsible for the acts and omissions of its officers, employees, contractors, subcontractors, and agents, none of whom shall be deemed officer, agent, servant, or employee of the City. Neither Contractor nor its officers, employees, contractors, subcontractors, and agents shall obtain any rights to retirement benefits, workers compensation benefits, or any other benefits which accrue to City employees, and Contractor expressly waives any claim it may have or acquire to such benefits.

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

13.3. Binding on Successors. The provisions of this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the Parties.

13.4. Further Assurances. Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement.

13.5. The Actions of the City in its Governmental Capacity. Nothing herein shall be interpreted as limiting the rights and obligations of the City in its governmental or regulatory capacity.

13.6. Contractor's Obligations Performed at Its Sole Expense. Contractor shall perform Services solely for the compensation expressly provided for herein.

13.7. Parties Representatives. Except as otherwise expressly provided in this Agreement, the Contract Officer shall be authorized to act on behalf of City in the administration of this Agreement.

13.8. Gifts Prohibited. Contractor shall not offer any City officer or designated employee any gift.

13.9. Due Diligence. Contractor acknowledges that the City may be subject to statutory fines for failure to achieve mandated diversion levels and that waste management is a public health and safety concern. It agrees that it shall exercise due diligence in performing Services hereunder.

ARTICLE 14. TRANSFER AND AMENDMENTS

14.1. Transfer and Assignment.

14.1.1. City Approval of Transfer Required. The City, in entering into this Agreement, has placed a special value, faith and confidence in the experience, background and expertise of the Contractor in the field of waste disposal. Such faith and confidence being a substantial consideration in the granting of this Agreement, the parties therefore agree that no transfer of Contractor's interest hereunder may occur without the express written approval of City granted as provided hereunder, and any such transfer shall be void unless specifically authorized hereunder. As used in this Article, transfer shall be broadly construed to include any change in ownership or control, any transfer of stock in the Contractor's business, the delegation or assignment of duties, and the entering into subcontracts, with and to persons, firms or entities who are not existing shareholders or members of the immediate families of existing shareholders.

14.1.2. Existing Shareholders. Contractor's ownership interests are divided among the following individuals or their trusts: Jim Cunningham, Lissa Cunningham, Michael Jaycox, Rick Wade, Randy Wade, Ryan Wade, Linda (Wade) Dolph and Sheree (Wade) Holkesvig.

14.1.3. Transfers Among Existing Shareholders. Any transfer of ownership interests among existing shareholders may occur without the approval of City. Contractor shall be obligated to inform City Manager of a transfer of ownership interests among existing shareholders within ten (10) days of the effective date of such transfer.

14.1.4. Transfers to Immediate Family Members. Except for the demise of an existing shareholder as described below, any transfer of ownership interests to an immediate family member of an existing shareholder may occur with the prior written approval of the City Manager provided that the City Manager finds all of the following: (i) that the transfer of such ownership interests have no adverse impact on Contractor's operations in City; (ii) that the transfer of such ownership interests will not result in any interest in Contractor being vested in any person who is not an immediate family member of the initial owners of Contractor; and, (iii) that the transfer will not impair the continuing validity of the Company's operating permits. In the event the City Manager is unable to make these findings, or has any concerns regarding his ability to do so, he may refer the matter in whole or part to the City Council for its consideration, approval, or other action, and the City Council shall have the discretion to consider the proposed transfer of such ownership interests to be an assignment of this Agreement.

14.1.5. Exception for Demise of an Existing Shareholder. In the event of the demise of an existing shareholder, ownership interests may pass to the immediate family member of the deceased shareholder without the requirement of an approval by the City. Contractor shall notify City within thirty (30) days of the demise of an existing shareholder and the transfer of ownership interests to immediate family members related thereto.

14.1.6. Core Management Employees or Advisors. In addition, during the term of this Agreement, Contractor shall not replace the members of its core group of management employees or advisors, who are identified as Jim Cunningham, Michael Jaycox, Rick Wade, Chris

Cunningham, Mike Reed, CPA and Robert Kuznik, without the prior written consent of the City, which shall not be unreasonably withheld. To assist the City in determining whether to grant its consent, as required by this Section, Contractor shall provide City with reasonable information concerning the knowledge, experience and background of any proposed addition to Contractor's core group of management employees or advisors.

14.2. Consent of City. Any change in ownership or control involving a party who is not an existing shareholder or immediate family member of an existing shareholder shall require the prior approval of the City which shall not be unreasonably withheld. The City's consent for a transfer to a party that is not an existing shareholder or immediate family member of an existing shareholder shall be based upon the prospective owner's financial capability, background, reputation, experience and expertise in the field of waste disposal, as described below.

14.2.1. Required Information. Contractor shall submit its request for City consent to the City together with the following documentation and any other documentation the City may request:

- A. Assignee's audited financial statement for the immediately preceding three (3) operating years indicating that the proposed assignee's financial status is acceptable to City and adequate to provide the Services hereunder.
- B. Satisfactory proof that the proposed assignee has at least ten (10) years of municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor.
- C. Satisfactory proof that in the last five (5) years, the proposed assignee has not suffered any citations or other censure from any federal, state, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with federal, state, or local waste management law and that the assignee has provided City with a complete list of such citations and censures.
- D. Satisfactory proof that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion.
- E. Satisfactory proof that the proposed assignee has at all times conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including hazardous waste.
- F. Or any other information required by City to ensure the proposed assignee can fulfill the terms hereof, including the payment of indemnities and damages and provision of bonds and/or performance guaranties, in a timely, safe, and effective manner.

14.3. Approval of Transfer; Transfer Fees. Any application for a change of ownership or a franchise transfer shall be made in a manner prescribed by the Contract Officer. Contractor shall make (1) a deposit of fifty thousand dollars (\$50,000) to cover City's reasonable expenses related to the transfer, payable prior to City consideration of the transfer request, and (2) a payment of fifty thousand dollars (\$50,000) as a transfer fee, payable prior to any authorized change of ownership or franchise transfer becoming effective. The deposit shall be used to pay the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. City shall document the expenditure of all funds from the deposit and shall reimburse all surplus funds to Contractor. Contractor shall supplement the deposit within ten (1) days of the City's request therefore, in the event additional funds are required. The transfer shall be approved by Resolution of the City Council approved in accordance with section 5.04c, except as provided below in subsection d. The amount of the deposit and the transfer fee shall be adjusted annually by the same percentage of any CPU-I adjustment in rates Contractor receives pursuant to this Agreement.

14.4. Subcontractors. The use of a subcontractor to perform services under this Agreement shall not constitute delegation of Contractor's duties provided that Contractor has received prior written City approval to subcontract such services and the City by its Contract Officer has approved in writing the subcontractor. Contractor shall be responsible for directing the work of Contractor's subcontractors and any compensation due or payable to Contractor's subcontractors shall be the sole responsibility of Contractor. City shall have the right to require the removal of any approved subcontractor.

14.5. Amendments.

14.5.1. By Agreement. The Parties may change, modify, supplement or amend this Agreement only upon mutual written agreement duly authorized and executed by both Parties.

14.4.2. City Manager May Act as Authorized Representative. Authority to act on behalf of the City is hereby delegated to the City Manager or his or her designee ("Contract Officer"), except that the Contract Officer may not approve any amendments to this Agreement involving payments in excess of \$25,000.

ARTICLE 15. NOTICES, CONSENTS, APPROVALS, ETC.

15.1. Notices, etc. All reports, demands, requests, directions, selections, option exercises, orders, requests, proposals, reviews, comments, acknowledgements, approvals, consents, waivers, certifications and other communications made hereunder shall be in writing, other than computerized reports in accordance with Article 7, and shall either be sent electronically or be personally delivered to a representative of the Parties at the address below or deposited in the United States mail, first class postage prepaid (certified mail, return receipt requested) or by commercial delivery service providing delivery verification, addressed as follows:

If to City:

City Manager
City of Palm Springs
PO Box 2743
Palm Springs, CA 92263-2743

If to Contractor:

Palm Springs Disposal Services
4690 E Mesquite Avenue
PO Box 2711
Palm Springs, CA 92263-2711
Attn: Rick Wade

Notices may be delivered via electronically provided that any such delivery shall be promptly followed by such personal or mailed delivery.

Notice by City to Contractor of a missed pick-up or a Customer problem or complaint may be given to Contractor orally by telephone at Contractor's Local Office with written confirmation sent to Contractor within twenty-four (24) hours of the oral notification.

Parties may change their address upon Notice to the other Party as provided above.

Exercise of Options. Except as otherwise provided, the Parties' exercise of any approval, disapproval, option, discretion, satisfaction, determination, election, or choice hereunder shall be reasonable; unless this Agreement specifically provides otherwise.

ARTICLE 16. EXECUTION OF AGREEMENT

16.1. Execution in Counterparts. This Agreement may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Agreement.

16.2. Authority to Execute. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the latter of the date written below.

CITY:
CITY OF PALM SPRINGS

City Manager
Date: _____
ATTESTED BY

City Clerk
Date: _____
APPROVED AS TO FORM

City Attorney
Date: _____
CONTRACTOR:
PALM SPRINGS DISPOSAL SERVICES

By: _____
Its: _____
Date _____
By: _____
Its: _____
Date _____
APPROVED AS TO FORM

Counsel for Contractor