

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

\* \* \*

May 24, 2013

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11. Downtown Compactor Facility Service Area
12. Notary Certification



## **AGREEMENT**

This Agreement for Integrated Solid Waste Management Services (hereinafter the "Agreement") is entered into this \_\_\_ day of \_\_\_\_\_, 2013, by and between the City of Hermosa Beach, California, ("City") and Arakelian Enterprises, Inc. dba Athens Services ("Contractor"), for the collection, transportation, recycling, processing, and disposal of solid waste and other services related to meeting the goals and requirements of the California Integrated Waste Management Act.

### **RECITALS**

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 ("AB 939") (California Public Resources Code Section 49100 et seq.), has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and,

WHEREAS, pursuant to California Public Resources Code Section 49300 and 49500 through 49524 inclusive, the City has determined that the public health, safety, and well-being require that an exclusive franchise be awarded to a qualified company for the collection, transfer and transportation, recycling, processing, and disposal of solid waste and other services related to meeting the diversion goals required by AB 939, and other requirements of the California Integrated Waste Management Act; and,

WHEREAS, City declares its intention of maintaining reasonable rates and quality service related to the collection, transfer and transportation, recycling, processing, and disposal of solid waste and other services; and,

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

WHEREAS, City and Contractor ("Parties") hereto desire to enter said Agreement; and,

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, processing 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 premises in the City, transport for disposal, composting or other processing, and recycling of municipal solid waste which may contain hazardous substances; and further to confirm that as a material inducement to City entering into this Agreement, Contractor has agreed to fully indemnify City in connection with any claims, losses, liabilities, lawsuits or actions 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; and,

WHEREAS, Contractor has agreed, as part of this Agreement, acting as an independent contractor to provide such personnel, equipment and supplies as are necessary to ensure City complies with the requirements of Public Resources Code Section 49100, et seq.

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

## ARTICLE 1

### DEFINITIONS

The terms used in this Agreement shall have the meaning set forth in this Article 1. In the event a term is not defined in this Article 1, then it shall have the meaning set forth in the Hermosa Beach Municipal Code or in Division 30, Part 1, Chapter 2 of the California Public Resources Code (with precedence given to definitions in the Hermosa Beach Municipal Code over conflicting definitions contained in the Public Resources Code). Except as provided in Article 1, words beginning with lower case letters are being used with their common ordinary meanings, not as defined terms. Otherwise, the following capitalized words and terms shall have the following meanings:

#### 1.1 AB 939

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

#### 1.2 Affiliate

"Affiliate" means all businesses (including corporations, limited and general partnerships and sole proprietorships) which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interest or common management shall be deemed to be "Affiliated with" Contractor and included within the term "Affiliates" as used herein. An Affiliate shall include a business in which Contractor owns a direct or indirect ownership interest, a business which has a direct or indirect ownership interest in Contractor and/or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor. For purposes of determining whether an indirect ownership interest exists, the constructive ownership provisions of Section 318(a) of the Internal Revenue Code of 1986, as in effect on the date of this Agreement, shall apply; provided, however, that (i) "ten percent (10%)" shall be substituted for "fifty percent (50%)" in Section 318(a)(2)(C) and in Section 318(a)(3)(C) thereof; and (ii) Section 318(a)(5)(C) shall be disregarded. For purposes of determining ownership under this paragraph and constructive or indirect ownership under Section 318(a), ownership interest of less than ten percent (10%) shall be disregarded and percentage interests shall be determined on

the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

### **1.3 Billings**

"Billings" or "Billing" or "Bill" means the statements of charges provided to Customers for services rendered by Contractor.

### **1.4 Bin**

"Bin" means a metal Container with hinged lids and wheels with a capacity of less than ten (10) cubic yards.

### **1.5 Bin Service**

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

### **1.6 Bulky Items**

"Bulky Items" means Solid Waste that cannot and/or would not typically be accommodated within a Cart including specifically: furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances and other similar items, commonly known as "white goods"); yard debris, Green Waste and small pieces of wood limited to one cubic yard of contained material; Electronic Waste; fluorescent bulbs; household batteries; and clothing. Bulky Items do not include car bodies, tires, Construction and Demolition Debris or items requiring more than two (2) persons to remove. Other items not specifically included or excluded above will be Collected provided that they are not more than eight (8) feet in length, four (4) feet in width, or more than one hundred fifty (150) pounds. In the event a question ever arises as to whether a specific item or category of items meets the definition of Bulky Items, City shall be responsible to determine whether said definition shall apply, which determination shall be final and binding on the Parties.

**1.7 CalRecycle**

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

**1.8 Can**

“Can” means a plastic Container with a lid and with or without wheels, with a capacity between 30 and 35-gallons, also referred to as a barrel.

**1.9 Can Service**

“Can Service” refers to Residential service provided in accordance with Section 4.1.2 in which Contractor provides Residential Customers Cans, bags or boxes, for Refuse Collection due to Cart Collection not being feasible.

**1.10 Cart**

“Cart” means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 32- and no greater than 101-gallons. Cart also means a 20-gallon Cart provided to Residential Customers at a discounted rate as provided in this Agreement.

**1.11 City**

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

**1.12 City Manager**

“City Manager” means the City Manager of the City of Hermosa Beach and his or her designee.

**1.13 Collect/Collection**

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

#### **1.14 Commercial**

"Commercial" refers to services performed at or for Commercial Premises.

#### **1.15 Commercial Premises**

"Commercial Premises" means Premises located within the boundaries of the City, occupied or used for any purpose other than residential uses. It includes premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein in the Hermosa Beach Municipal Code or otherwise, for purposes of this Agreement, Premises upon which the following uses are occurring shall be deemed to be Commercial Premises: Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities, Group Care Facilities, Hotels, Hostels, and Motels.

#### **1.16 Contractor**

"Contractor" means Arakelian Enterprises, Inc. dba Athens Services, a corporation organized and operating under the laws of the State of California and its officers, directors, employees, agents, companies and subcontractors, as permitted under Section 12.6.

#### **1.17 Contractor's Proposal**

"Contractor's Proposal" means the proposal submitted by Contractor to City on May 7, 2012 in response to a Request for Proposals dated March 13, 2012. This Agreement supersedes Contractor's Proposal and is the final written expression of the Parties' Agreement.

#### **1.18 Contractor Compensation**

"Contractor Compensation" means the revenue received by the Contractor from Customers and the City in return for providing services in accordance with this Agreement.

**1.19 Construction and Demolition Debris**

"Construction and Demolition Debris" means Solid Waste generated at a Premises that is directly related to construction or demolition activities occurring thereon.

**1.20 Container**

"Container" means any and all types of Solid Waste receptacles, including Carts, Cans, Bins and Roll-off Boxes.

**1.21 CPI**

"CPI" means the Consumer Price Index (CUUR0000SA0L1E) for All Urban Consumers (CPI-U), all items less food and energy index - U.S. city average.

**1.22 Customer**

"Customer" means a Person receiving Solid Waste Handling Services from Contractor pursuant to the terms of this Agreement.

**1.23 Dispose/Disposal**

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

**1.24 Disposal Site(s)**

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

**1.25 Diversion**

"Diversion" means any combination of waste prevention (source reduction), recycling, reuse and composting activities that reduces waste disposed at landfills, provided such activities are recognized by CalRecycle as Diversion in its determination of the City's Diversion rate and compliance with AB 939. CalRecycle may limit Diversion considered to be achieved through Transformation/waste-to-energy, use of Green Waste as alternative daily cover ("ADC") and other activities.

### **1.25A Downtown Area**

“Downtown Area” means the properties, businesses and Customers as defined in Exhibit 9.

### **1.25B Downtown Compactor**

“Downtown Compactor” means the Roll-Off Box attached to compaction equipment used to service the businesses located in the Downtown Compactor Facility Service Area (See Exhibit 11).

### **1.25C Downtown Compactor Facility**

“Downtown Compactor Facility” means the facility housing the Downtown Compactor (Roll-Off Box attached to compaction equipment), developed in City Parking Lot A. In the event that public restrooms are constructed as part of the Facility, the Downtown Compactor Facility does not include the public restrooms.

### **1.25D Downtown Compactor Facility Service Area**

“Downtown Compactor Facility Service Area” means portions of the Downtown Area where automated service is not feasible and Customers may utilize the Downtown Compactor Facility under the terms of this Agreement, and as further described in Exhibit 11.

### **1.26 Electronic Waste**

“Electronic Waste” means electronic equipment, including stereos, televisions, computers and monitors, VCRs, microwaves and other similar items commonly known as “brown goods” and “e-waste”.

### **1.27 Environmental Laws**

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the



Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; and Hermosa Beach Municipal Code Chapter 8; as currently in force or as hereafter amended, and all rules and regulations promulgated there under.

## **1.28 Facility**

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

### **1.28A Food Waste**

"Food Waste" means Solid Waste that may be Collected as part of the Food Waste programs included in Sections 4.3.1 and 4.3.7, which includes:

- All food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells);
- Food-soiled paper (including napkins, paper towels, paper plates); and,
- Tea bags, coffee grounds and filters.

## **1.29 Green Waste**

"Green Waste" means tree trimmings, wood stumps, small pieces of wood, grass cuttings, dead plants, leaves, branches, flowers, plant stocks, and dead trees (not more than six (6) inches in diameter or forty-eight (48) inches in length) and similar materials.

## **1.30 Green Waste Processing Facility**

"Green Waste Processing Facility" means a permitted Facility where Green Waste is sorted, mulched or separated for the purposes of Recycling, reuse or composting.

## **1.31 Gross Receipts**

"Gross Receipts" means any and all revenue received from Billings by City or Contractor, and compensation in any form, of Contractor or subsidiaries, parent companies or other Affiliates of Contractor, for the Collection and transportation of

Solid Waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to, Customer fees for Collection of Solid Waste, without subtracting Disposal fees, City fees or other fees or any other cost of doing business. Sales revenue from the sale of Recyclable Materials is excluded from Gross Receipts for the purpose of calculating Collector Fees.

### **1.32 Hazardous Substance**

"Hazardous Substance" shall mean any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "hazardous materials", "Hazardous Waste", "toxic waste", "pollutants" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, 25316, 25501 and 25501.1; (vi) the Clean Air Act, 42 USC §7901 et seq.; and (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated there under to such enumerated statutes or acts currently existing or hereafter enacted; and (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local Environmental Laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products and by-products.

### **1.33 Hazardous Waste**

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

**1.34 Household Hazardous Waste (“HHW”)**

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

**1.35 Materials Recovery Facility (“MRF”)**

"Materials Recovery Facility" means a permitted Solid Waste Facility where Solid Wastes or Recyclable Materials are sorted or separated for the purposes of Recycling, processing or composting.

**1.36 Multi-Family Dwelling**

"Multi-Family Dwelling" means any building or lot containing five (5) or more dwelling units. Multi-Family Dwelling units generally receive Refuse Collection service through the use of shared Bins, but may use Carts. Service is not dependent upon unit count unless specifically stated.

**1.37 Person**

"Person" means any individual, firm, association, organization, partnership, corporation, business trust, joint venture, the United States, the State of California, Los Angeles County, cities, and special purpose districts.

**1.38 Premises**

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

**1.39 Rate Year**

"Rate Year" means the period July 1 to June 30, for each year during the Term of this Agreement.

**1.40 Recycle/Recycling**

“Recycle” or "Recycling" means the processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not

intended for, or capable of, reuse is not Recycling. Recycling does not include use of Solid Waste for conversion to energy.

#### **1.41 Recyclable Materials**

"Recyclable Materials" means Solid Waste that is Source Separated, has some potential economic value, and is set aside, handled, packaged, or offered for Collection in a manner different from Refuse in order to allow it to be processed for Recycling.

#### **1.42 Refuse**

"Refuse" means putrescible and non-putrescible Solid Waste.

#### **1.43 Residential**

"Residential" refers to services performed at and for Residential Premises, which include both Single-Family Dwellings and Multi-Family Dwellings.

#### **1.44 Residential Premises**

"Residential Premises" means Premises upon which dwelling units exist, including, without limitation, Single Family Dwellings, apartments, boarding or rooming houses, condominiums and mobile homes. Notwithstanding any provision to the contrary herein, in the Hermosa Beach Municipal Code, or otherwise, for purposes of this Agreement, Premises upon which the following uses are occurring shall not be deemed to be Residential Premises, and rather shall be deemed to be Commercial Premises: Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities, Group Care Facilities, Hostels, Hotels, Motels, and any other businesses not specifically listed at which residency is transient in nature and hence should be classified as Commercial Premises as determined by City on a case by case bases.

#### **1.45 Roll-off Box**

"Roll-off Box" means Solid Waste Collection Containers of 10 (ten) cubic yards or larger.

**1.46 Single Family Dwelling**

"Single Family Dwelling" means a dwelling unit in a building containing fewer than five (5) Residential dwelling units. Single Family Dwelling units generally receive individual Can or Cart Refuse Collection service, but service is not dependent upon unit count unless specifically stated.

**1.47 Solid Waste**

"Solid Waste" means all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including Refuse, Construction and Demolition Debris, Bulky Items, Recyclable Materials, Green Waste, and Food Waste or any combination thereof which are permitted to be disposed of in a Class III landfill, and which are included in the definition of "Non-hazardous Solid Waste" set forth in the California Code of Regulations.

**1.48 Solid Waste Handling Services**

"Solid Waste Handling Services" means the Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste.

**1.49 Source Separated**

"Source Separated" means the segregation by the Waste Generator of individual components of Solid Waste, which otherwise would become Refuse or garbage (such as glass bottles, metal cans, newspapers, plastic containers, Green Waste etc.) into separate Container(s) for the purpose of allowing the Recycling of such materials.

**1.50 State**

"State" means the State of California.

**1.51 Transformation**

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

### **1.52 Transfer Station**

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

### **1.53 Waste Generator**

"Waste Generator" means any Person as defined by the Public Resources Code, whose act or process produces Solid Waste as defined in the Public Resources Code, or whose act first causes Solid Waste to become subject to regulation.

## ARTICLE 2

### GRANT AND ACCEPTANCE OF FRANCHISE

#### 2.1 Grant and Acceptance of Franchise, Indemnity of Award

Subject to the terms and conditions of this Agreement (including but not limited to the exclusions set forth in Section 2.9 hereof) and applicable State laws, and to the rights of State, county and school district facilities to use a Solid Waste enterprise other than Contractor, City hereby grants to Contractor and Contractor hereby accepts from City, for the Term hereof, the exclusive franchise, right and privilege to provide Solid Waste Handling Services at all Residential and Commercial Premises within City (the "Franchise").

#### 2.2 Enforcement of Exclusivity

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Contractor or otherwise. City additionally shall have the right, but not the obligation, to request that Contractor enforce the exclusivity provisions hereof. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. For example, Contractor may be asked to notify City of inappropriately placed Containers and to place warning tags on such Containers. City may direct Contractor to impound such Containers in accordance with the City's Municipal Code and may be entitled to charge Container owners City-approved fees for such impounding. If Contractor requests that City take administrative, law enforcement, or other legal action to protect Contractor's exclusive rights, or otherwise enforce the exclusivity of this Agreement (including the adoption of any resolution or ordinance intended to facilitate the enforcement of the exclusive rights granted herein), Contractor shall reimburse City for all administrative, law enforcement, or other legal costs and fees related to any such action. Contractor's obligation to reimburse City shall not apply to any criminal enforcement by City.

### **2.3 Effective Date**

The "Effective Date" of this Agreement shall be the date which the City Council approves this Agreement.

### **2.4 Term of Agreement**

The term of this Agreement (the "Term") shall be eight (8) years, commencing on July 1, 2013, and expiring June 30, 2021, subject to extension as provided in Section 2.5, as applicable. Notwithstanding the foregoing, the unexcused failure or refusal of Collector to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

### **2.5 City's Option to Extend Term**

City shall have the sole option to extend the Term of this Agreement up to twenty-four (24) months following the Agreement Term under Section 2.4. The City may, upon at least ninety-day (90-day) advance written notice to the Contractor prior to the expiration of the Term of this Agreement, exercise this extension option. This extension period shall terminate, upon the earlier of: (i) the expiration of the aforementioned twenty-four (24) months, or (ii) the date City instructs Contractor that the contact will end, provided written notice of termination is provided to Contractor by City at least ninety (90) days prior to this termination date.

### **2.6 Representations and Warranties of Contractor**

Contractor hereby covenants, represents, and warrants the following to City for the purpose of inducing City to enter into this Agreement and to consummate the transaction contemplated hereby, all of which shall be true as of the date of this Agreement and as of the Effective Date:

- a) Contractor is validly existing as a corporation under the laws of the State of California.
- b) Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder: (1) conflicts with, violates or results in a breach of any applicable law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment,



- decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.
- c) There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations hereunder or which would have a material adverse effect on the financial condition of Contractor. This provision may be waived by the City acting through its City Manager.
  - d) Contractor has no knowledge of any applicable law in effect as of the date of this Agreement that would prohibit the performance by Contractor of this Agreement and the transactions contemplated hereby.
  - e) Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection services required by this Agreement.
  - f) The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement. Inaccuracies in Contractor's Proposal, such as material omissions of past and pending litigation as requested under the Request for Proposals through which this Agreement was procured, are grounds for termination of this Agreement.

- g) Contractor's representative, designated in Section 5.2.3, shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.

## **2.7 Conditions to Effectiveness of Agreement**

The satisfaction of each and all of the conditions set out below, each of which may be waived in whole or in part by City in writing, is a condition precedent to the effectiveness of this Agreement:

- a) Accuracy of Representations. All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true and correct on and as of the Effective Date.
- b) Absence of Litigation. There shall be no litigation pending in any court challenging the award of this Franchise to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance. This provision may be waived by the City, acting through its City Manager.
- c) Furnishing of Insurance and Bond. Contractor shall have furnished evidence of the insurance and bonds required by Article 9, and shall comply with all ongoing requirements relating thereto.
- d) Contractor shall have paid the contracting fee to City, as provided in Section 3.1.

## **2.8 Delegation of Authority**

The administration of this Agreement by City shall be under the supervision and direction of City Manager's office and the actions specified in this Agreement, unless otherwise stated, shall be taken by the City Manager. This section shall in no way be interpreted to obviate required City Council action if so provided in the Hermosa Beach Municipal Code.

## **2.9 Limitations to Scope**

Notwithstanding any provision to the contrary contained herein, the exclusive franchise, right and privilege to provide 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 the subject of other permits, licenses, franchises or agreements issued or entered into by City:

- a) The sale or donation of Source-Separated Recyclable Material by the Waste Generator to any Person or entity other than Contractor; provided, however, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material, even if the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay), the transaction shall not be considered a sale or donation;
- b) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any 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;
- c) Green Waste removed from a Premises 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;
- d) The Collection, transfer, transport, Recycling, processing, and disposal of animal remains from slaughterhouse or butcher shops for use as tallow;
- e) The Collection, transfer, transport, Recycling, processing, and disposal of by-products of sewage treatment, including sludge, sludge ash, grit and screenings;
- f) The Collection, transfer, transport, Recycling, processing, and disposal of Hazardous Substances, Hazardous Waste, Household Hazardous Waste and radioactive waste regardless of its source;
- g) The Collection transfer, transport, Recycling, processing, and Disposal of Construction and Demolition Debris;
- h) The Collection of Refuse and/or Recyclables from public litter Containers (see Section 4.5.2 and Exhibit 4);
- i) The Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste generated from City-owned and/or operated premises, public works

- projects, City-sponsored events or other City-related activities, by City through City officers or employees in the normal course of their City employment; and,
- j) 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.

The exclusive franchise, right and privilege to provide Solid Waste Handling Services within City granted to Contractor by this Agreement shall be interpreted to be consistent with all applicable state and federal laws, now in effect and 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. 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.

## **2.10 City's Right to Direct Changes**

### **2.10.1 General**

City may direct Contractor to perform additional services (including new Recycling or other Diversion programs, additional Solid Waste processing, etc.) or modify the manner in which it performs existing services or Bills for services. Pilot programs and innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State law may increase the Diversion requirement during the term of this agreement and Contractor agrees to propose services to meet such Diversion requirements. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, including a profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. City may utilize cost components included in the Contractor's Proposal in calculating equitable rate adjustments. If City and Contractor cannot agree on compensation for new or additional services within ninety (90) days from the date City first requests a proposal from Contractor, then City may contract

with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.1.

### **2.10.2 New Diversion Programs**

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

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).
- Labor requirements (number of employees by classification).
- Type(s) of Containers to be utilized.
- Type(s) of material to be Collected.
- Provision for program publicity/education/marketing.
- One-year projection of the financial results of the program's operations in an operating statement format, including documentation of the key assumptions underlying the projections, and the support for those assumptions.

### **2.11 Ownership of Solid Waste**

City and Contractor understand and agree that it is Contractor, and not City, who will arrange to Collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste Collected by Contractor in City. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste that is Collected by Contractor which otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor; and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. Subject to the provisions of this Agreement, and unless City exercises its rights to direct the location for Disposal and processing of Solid Waste, Contractor shall have the right to retain, Recycle, process, dispose of, and otherwise use Solid Waste Collected pursuant to the terms hereof in any lawful fashion

or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste which it Collects. City's right to redirect Solid Waste is not intended to impact Contractor's right to retain Recyclables revenue pursuant to Section 4.2.4 of this Agreement. Ownership of Solid Waste shall transfer to Contractor when Customer places it at point of Collection.

Pursuant to Section 4.8, City reserves the right to designate the Solid Waste Facilities, including the Disposal Sites, to be used by Contractor. If City directs Contractor to a Facility other than a Solid Waste Facility chosen by Contractor (or directs Contractor to change the amount of Solid Waste being delivered to a Facility), and in doing so it adversely affects the ability of Contractor to meet either or both of the requirements of Section 4.2.5 and/or Section 9.4, then in this event the City and Contractor shall meet and confer and mutually agree on revised obligations for Sections 4.2.5 and 9.4. In addition, if any such exercise by City serves to significantly change Contractor's cost of Disposal, processing and transportation of Solid Waste, rates may be equitably adjusted.

## **2.12 Contractor Status**

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

## **2.13 Contractor Authorization**

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

## **2.14 Permits and Licenses**

Contractor shall acquire and maintain all necessary permits and licenses for the Collecting, transporting, processing, and storing of Solid Waste including Recyclables, disposing of Solid Waste, and the Recycling of Recyclables as required under this Agreement. Failure to maintain all required permits shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Section 11.1. Contractor must follow requirements of the Hermosa Beach Municipal Code.

## ARTICLE 3

### FEES PAID TO THE CITY

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

#### **3.1 Contracting Fee**

Contractor shall pay to City a "Contracting Fee" in a one-time lump sum payment of One Hundred Fifty Thousand Dollars (\$150,000) within seven (7) days of execution of this Agreement to reimburse the City for costs it incurred in connection with entering this Agreement.

#### **3.2 Collector Fee**

In consideration of the exclusive Franchise granted pursuant to this Agreement, the Contractor shall pay to the City a "Collector Fee," equal to 10% of the Gross Receipts, net of AB 939 fees, received by Contractor. See Section 3.5 for submittal requirements.

#### **3.3 Administrative Fee**

To cover the cost of administering and managing the Franchise, the Contractor shall pay to the City an annual Administrative Fee in the amount of Fifty Thousand Dollars (\$50,000), one twelfth of which to be paid monthly in accordance with Section 3.5. The Administrative Fee shall be adjusted annually, beginning with the January payment, by the percentage change in the Consumer Price Index for all Urban Customers (CPI-U), all items less food and energy - US City average for the twelve (12) month period ended the prior September. See Section 3.5 for submittal requirements.

#### **3.4 AB 939 Fee**

In order to support City's recycling efforts, Contractor shall remit to City an AB 939 Fee in an amount equal to twenty-five cents (\$0.25) per Residential Cart/Can Customer per month, and twenty-five cents (\$0.25) per cubic yard of Refuse collected for all other Customers, including Multi-Family Bin, Commercial Cart, Bin and Can and Roll-Off



Box Customers, for both permanent and temporary services, but excluding source separated Recyclable Material Collection. See Section 3.5 for submittal requirements.

See approved rate schedule for AB 939 fees by service level. An example calculation of the monthly AB 939 Fee for a Bin Customer is as follows: a three (3) cubic yard Bin Collected five (5) times per week will result in an AB 939 fee of \$16.25 per month ( $\$0.25$  per cubic yard  $\times$  3 cubic yards  $\times$  5 times per week  $\times$  4.33 weeks per month).

### **3.5 Timing and Submittal of Monthly Fee Payments**

On or before the fifteenth (15<sup>th</sup>) day of each month during the Term of this Agreement, Contractor shall remit the Collector Fee and the AB 939 Fee based upon services provided to City the previous month, and one-twelfth of the annual Administrative Fee. If the fees are not paid on or before the fifteenth (15<sup>th</sup>) day of the month, Contractor shall, along with fee payment, pay the maximum interest rate permitted by law on any balance not paid by the due date.

Contractor shall prepare and submit a fee payment statement with each fee payment that includes receipts by sector and supporting fee calculations for each fee.

Note that, as the Collector and AB 939 Fees are paid based upon the prior month's services and receipts, a payment will be due the month following termination of the Agreement. This will not apply to the Administrative Fee, which is payable each month beginning July 2013.

### **3.6 Future Fees**

In the event that City implements a new fee in compliance with all legal requirements such as Proposition 218 (including an increase in the Collector Fee percentage, or the AB 939 fee dollar amount), Contractor shall be entitled to a rate adjustment in an amount sufficient to recover the fee from Customers. City may elect to have Contractor pay monthly, or on another schedule as City identifies. City may set deadlines and late fees, and additional fees would be subject to audit.

## **ARTICLE 4**

### **DIRECT SERVICES**

#### **4.1 Refuse**

##### **4.1.1 General**

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

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

##### **4.1.2 Residential Cart/Can Refuse Collection**

Contractor will supply each Residential Refuse Cart Customer with 96, 64, 32 or 20-gallon Refuse Cart(s), as requested by Customer as described in Section 4.4.1.1. Residential Customers shall be charged based upon the number and size of Refuse Carts requested. Should a Residential Customer require more than one (1) 20-gallon Refuse Cart to contain all Collected Refuse, then the Residential Customer shall be required to convert to a larger Cart at the applicable rates.

Alternative "Can" Service - Residential Customers who cannot accommodate Carts due to space constraints and/or conditions otherwise preventing the use of Carts will continue to receive service using Contractor-provided Refuse Containers, such as Cans, bags or boxes, for an equivalent monthly fee based on Container size; this form of service shall be called "Can" service. If Contractor and Customer cannot agree on whether Can service is necessary, the City Manager shall make the final determination.

Residential Customers that receive Can service in the form of barrels may request, and Contractor shall supply, barrels with both lids and wheels to facilitate ease of movement by Customers.

Contractor shall Collect Refuse delivered for Collection in accordance with this section not less than once per week. The designated Collection location of Containers, if disputed by the Customer or the Contractor, shall be determined by the City. Additionally, if in the City's opinion the existing Collection location is inappropriate, the City may require the Customer and/or the Contractor to relocate the Collection location.

#### **4.1.3 Refuse Cart/Can Overage**

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s)/Can(s). Residential Customers are therefore entitled to six (6) annual pickups per calendar year of material that does not fit in the Refuse Cart(s) at no additional charge. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse.

Additionally, Contractor shall Collect all additional Refuse placed out for Collection in the Residential Customer's own Containers (bags, barrels, etc.) at no additional charge for two (2) weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart or Cans, and not Bulky Items which are Collected in accordance with Sections 1.6 and 4.1.15.

Residential Customers may be charged per pickup in accordance with the approved rate schedule for overage pickups exceeding six (6) per year and outside the two-week period beginning December 26.

Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

#### **4.1.4 Walk-Out Service**

Walk-Out Service means that Contractor will remove Refuse, Recyclable and Green Waste Carts and, if applicable, Customer-provided Containers from Customer's storage area, place them out for Collection, and return Carts and Customer-provided

Containers to Customer's storage area after Collection, ensuring that all doors or gates are closed securely.

Contractor shall provide disabled Residential (excluding Bin) Customers with Walk-Out Service at no additional charge. In order to qualify as disabled under this Section, Customers must provide evidence that they are physically unable to move the Containers, such as a doctor's note, or must otherwise obtain approval to receive such services from the City. Additionally, Walk-Out Service need not be provided if an able-bodied person resides with the disabled Customer. Customers may be asked periodically, but no more than once per year, to sign an affidavit that no able-bodied residents reside at the Premises.

Able-bodied Customers may request Walk-Out Service for an additional charge in accordance with the approved rate schedule.

#### **4.1.5 Bin Refuse Collection**

Contractor shall provide Bin Service to Residential Customers not receiving Cart or Can service, and Commercial Customers. Contractor shall Collect and remove all Refuse that is placed in Bins at least once per week, and more frequently if required to handle the waste generated at the Premises where the Bins are located. If Contractor and Customer dispute applicable service levels, City shall make final determination as to the number and size of Containers, and frequency of Collection to be provided to Customers. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded.

Contractor shall provide 1, 1.5, 2, 3, 4, 6 and 8 cubic yard Bins upon request. Contractor will service Bins equipped with compaction devices or "compactors" that attach to the Bins. The provision of the compaction device itself is outside of this Agreement.

#### **4.1.6 Commercial Premises Cart Service**

Contractor shall offer Collection in 32, 64 or 96-gallon Refuse Carts to Customers at Commercial Premises that do not have space for a Bin. If Contractor and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, City shall make the final determination as to whether Collection in a Refuse Cart may occur.

#### **4.1.7 Overflowing Bins and Carts**

Customers that regularly produce more Refuse than their current level of service can accommodate may have their service level increased in accordance with the following procedure. Containers may be considered overflowing if Solid Waste rises above the top of the Container sufficiently that it is likely to fall out of the Container.

First Incident in Three Month Period - If more material is placed for Collection than fits in a Containers (unless Collection of overage has been properly arranged under Section 4.1.3), Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer (at both the service and billing addresses) the picture and a letter instructing that additional instances may result in an increase in the level of service.

Second Incident in Three Month Period - Upon the second event of an overfilled Container (unless Collection of overage has been properly arranged under Section 4.1.3) in a three-month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter instructing that a third incident in that same three month period may result in an increase in the level of service.

Third Incident in Three Month Period - Upon the third event of an overfilled Containers (unless Collection of overage has been properly arranged under Section 4.1.3) in a three-month period, Contractor shall photograph the overflowing Container, Collect the Solid Waste, and send to the Customer the picture and a letter requesting that Customer increase its service level. If the Customer declines, Contractor may petition City to permit Contractor to increase the service level to accommodate the higher demand for service. City approval is required prior to increasing a Customer's service level without prior Customer consent.

#### **4.1.8 Temporary Bin Service**

Contractor shall provide exclusive temporary Bin Service to Customers upon request. Contractor must deliver a temporary Bin to a Customer within forty-eight (48) hours of request (Sundays and holidays identified in Section 4.6.1.1 excluded). Rates for temporary Bin Service are listed separately in the approved rate schedule.

#### **4.1.9 Scout Vehicles**

Scout vehicles are defined as vehicles that transport a Solid Waste Container to and from the point of Collection by a Collection vehicle. Customers receiving scout truck service immediately prior to the start of service under this Agreement will continue to receive this service as identified in Exhibit 8. Contractor may continue to charge existing scout service Customers for this service, if it is operationally required to service the Bin. Contractor may add Customers to this service if the Bin cannot otherwise be positioned for Collection or if the service is requested by the Customer, or remove Customers from the scout route, in accordance with the approved rate schedule. In the event of a disagreement, the City shall make the final decision.

#### **4.1.10 Bin Push-out Service**

Contractor shall maneuver Customers' Bins to the point of Collection, and return the Bins to Bin enclosures or other storage locations. Company may only charge a push-out fee, included in the approved rate schedule, if the push-out distance is at least ten (10) feet from the front of the enclosure or other storage location to the point on the Bin closest to the storage location when positioned for Collection, and that this point of Collection is as close to the storage location as operationally feasible. If it is operationally feasible for the route Collection vehicles to Collect at a location close enough that this measurement does not reach ten feet, a fee will not be applied. In accordance with Exhibit 2, if a fee is permitted per this section, it may be applied for each fifty (50) feet the Bin must be moved; charged once for ten (10) to fifty (50) feet, twice for fifty-one (51) to one hundred (100) feet, etc. Application of this fee to Customers not already being charged is subject to written approval of the City.

A push-out and a scout charge may not both be applied for servicing the same Bin.

#### **4.1.11 Locking Bins**

Contractor shall provide locking Bin Service (including providing the hasp and lock and servicing the lock) to Customers that request such service in accordance with the approved rate schedule.

#### **4.1.12 Roll-off Box Service**

Contractor shall provide exclusive permanent and temporary Roll-off Box Collection service upon request. Contractor must deliver a temporary Roll-off Box to a Customer within forty-eight (48) hours of request (Sundays and holidays identified in Section 4.6.1.1 excluded).

Contractor will provide standard 10, 30 and 40-cubic-yard standard Roll-off Boxes. The provision of compactor Roll-off Boxes, which are enclosed Containers attached to a compaction devise, is not included in this Agreement. Providing service to such compactor Roll-off Boxes is included.

Roll-off Box service shall be Billed at a pull plus dump rate, meaning a flat rate for service plus a per ton rate for the Solid Waste Collected.

Customer may be charged a per ton overweight charge for each ton over ten (10) in any Roll-Off Box load. If Contractor can determine that a load is greater than ten (10) tons prior to Collection, Contractor may instruct Customer to reduce the load to no more than ten (10) tons.

#### **4.1.13 Extra Assistance in High Solid Waste Generating Commercial Areas**

Areas of the City, particularly the Downtown Area, receive a significant increase in Solid Waste disposal on holiday weekends when Collection service might otherwise be postponed. In the Downtown Area (see Exhibit 9), Contractor shall continue Collection despite holidays, shall provide extra pickups as needed to minimize overflowing Containers, and maintain cleanliness in and around Bin enclosures and Solid Waste Containers.

Contractor shall proactively work with Customers to plan for surges in Solid Waste generation. Contractor shall work with Customers to minimize overflow from Bins and into enclosures on an ongoing basis.

#### **4.1.14 Shared Solid Waste Downtown Compactor Facility and Porter Service**

Customers in the Downtown Compactor Facility Service Area share Solid Waste Container(s) due to space constraints on using individual Collection Containers and must utilize the Compactor Facility for solid waste collection.

Contractor shall monitor and control access to the shared solid waste facility. Additional collection containers, such as for grease collection, may be housed in this Facility, and access will be provided to Customers paying for the shared Collection service and to third parties hired to provide collection of grease or other materials from the enclosure. Contractor is responsible for enclosure cleanliness and shall steam clean this enclosure, in accordance with all National Pollution Discharge Elimination System (NPDES) regulations, reclaiming and properly removing for disposal water, a minimum of three times per week, or more frequently if needed to control cleanliness of enclosure. Contractor is responsible for monitoring and maintaining cleanliness of adjacent areas used to place other Solid Waste Containers, including Recycling Bins.

**A. Shared Solid Waste Containers in Downtown Compactor Facility Service Area Prior to Construction of Downtown Compactor Facility**

- a) Prior to construction of new Downtown Compactor Facility, businesses in the Downtown Compactor Facility Service Area utilizing the shared solid waste containers in the existing non-automated enclosure shall continue bringing solid waste to the enclosure for Collection. Rates shall be charged based on generation level data from previous hauler.
- b) When construction on new Downtown Compactor Facility begins, Contractor shall also provide a secured temporary staging area that will serve to provide trash collection services during the construction process. The Contractor shall have a designated representative to coordinate disposal operations during the construction process.
- c) Access and Cleaning – Contractor shall monitor and control access to the shared solid waste facility. Additional collection containers, such as for grease collection, may be housed in this Facility, and access will be provided to Customers paying for the shared Collection service and to third parties hired to provide collection of grease or other materials from the enclosure. Contractor is responsible for enclosure cleanliness and shall steam clean this enclosure, in accordance with all National Pollution Discharge Elimination System (NPDES) regulations, reclaiming and properly removing for disposal water, a minimum of three times per week, or more frequently if needed to control cleanliness of enclosure. Contractor is responsible for monitoring and maintaining cleanliness of adjacent areas used to place other Solid Waste Containers, including Recycling Bins.



## **B. Shared Solid Waste Containers in Downtown Compactor Facility Service Area After Construction of Downtown Compactor Facility**

- a) Porter Service. Porter service is the provision of Contractor employee(s) to operate and maintain the Downtown Compactor Facility. Contractor may assess fees for porter service in accordance with the approved rate schedule. This fee shall represent full compensation for the porter service. Contractor shall be responsible for dividing the porter service fee among Customers based on level of generation, which will, at a minimum, be done at the start of service, each time there is a change in the amount of the fee, and if requested by City. Contractor shall maintain records of level of generation and Collection of Solid Waste at participating businesses, and shall update the records, at a minimum, once a year, and each time the City requests a report or there is a change in tenants that may significantly alter the distribution of Collection efforts.

City may request an increase or decrease in the customer base receiving porter service, may add additional enclosures, or make other service adjustments; if such service changes make a significant impact in the cost of providing service, the porter service fee shall be adjusted to reflect the actual change in costs.

- b) Cost Allocation. Only costs included on the approved rate schedule and as provided in this section, and the new Downtown Compactor Facility construction cost and utilities as described in Section 4.12, may be charged and allocated by Contractor. Contractor shall determine shared Container Collection costs in accordance with the approved rate schedule and shall allocate the cost to participating Customers based upon usage. This allocated Solid Waste Collection fee shall be identified on the Customer's invoice separately from the allocated porter service fee.

In addition to rates for Collection services under the approved rate schedule, businesses in the Downtown Compactor Facility Service Area utilizing the Downtown Compactor Facility described in Section 4.12 may also be charged for utility services and lease of the compactor.

Utility services for said Facility operation may be charged, including Gas, Water, and Electric service. Gas may be employed for the provision of hot water service. Electrical service will be required for lighting, and operation of compactors, roll-

up doors, and miscellaneous equipment. Water will be required for operation and cleaning of facilities.

The cost of leasing the compactor may be charged to participating businesses provided City provides written approval of the amount based on documentation of cost of the lease.

The Facility will also include a confined area for the installation of an above-ground grease receptacle, providing a means for disposal of used restaurant grease. While Contractor does not provide the grease collection service, Contractor shall keep the grease collection area clean. Contractor shall also be responsible for operation and maintenance of facility's grease clarifier.

These Downtown Compactor Facility costs shall be proportionally allocated amongst the participants in the same manner that the other Facility costs are proportioned among the participating businesses (see above), and shall be charged on the businesses' monthly billing statements.

- c) Dispute over Allocation of Fees and Costs. If Customer and Contractor dispute the allocation of porter fees or shared Solid Waste Collection costs, Contractor shall provide Solid Waste Collection reports to the City Manager identifying the estimated quantity of Solid Waste Collected by Customer versus total Solid Waste Collected, based upon capacity, and the City Manager's determination as to the allocation shall be final. Reallocation of these costs among Customers shall be done only upon request by, or with the approval of, the City. Reasons for reallocation may include a significant shift in the waste stream due to a change in mix of Customers or vacancy.
- d) Dispute over Participation in Shared Downtown Compactor Facility Collection and Porter Service. If there is a dispute between a Customer and Contractor as to whether a business is to participate in porter service and in sharing Collection services and service costs, or if the City Manager otherwise determines a change is warranted for health and safety or other reasons, City Manager shall make the final determination as to participation.

#### **4.1.15 On-Call Bulky Item Pickup**

Contractor shall provide Bulky Item pickup service to all Residential Customers (including Cart, Can and Bin Customers) on a regularly scheduled collection day. While Contractor may request Customers to call in Bulky Item pickups, Contractor shall ensure all items placed for Collection are picked up whether or not call has been placed. If it is unclear to the driver whether an item was intended for Collection, Contractor may contact Customer for confirmation prior to collecting the item(s). If Contractor is unable to contact the Customer or unable to receive confirmation prior to Collecting the item(s), Contractor will assign the Bulky Item(s) to the physical address in which the item(s) was placed. If there is a dispute between Contractor and Customer as to whether a Bulky Item Collection is to be assigned to a particular Customer, City will make the final determination.

Each Residential Customer shall be entitled to two (2) Bulky Item pickups per dwelling unit per calendar year at no additional charge.

Customers may put out up to three (3) cubic yards at each pickup. Contractor shall Collect all Bulky Items as defined in Section 1.6 including items referred to as Electronic Waste. The following provisions shall apply to this program:

- No single item that cannot be handled by two (2) workers will be accepted.
- The following items will not be picked up: Hazardous Substances, Hazardous Waste, including waste oil or anti-freeze. (For the purposes of this section, universal wastes such as fluorescent bulbs, household batteries, and televisions, monitors and other items referred to as Electronic Waste are not considered hazardous and will be Collected by and disposed of in accordance with this section as well as Sections 4.1.16 and 4.1.17 by Contractor.)

Residential Customers that exceed the number of free Bulky Item pickups, and all Commercial Customers, may receive Bulky Item Collection under the same terms for a fee, in accordance with the approved rate schedule in Exhibit 2.

#### **4.1.16 Bulky Item Diversion**

Bulky Items Collected by Contractor in accordance with Section 4.1.15, 4.1.17 and 4.5.6, or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

- 1) Reuse as is;
- 2) Disassemble for reuse or Recycling;
- 3) Recycle;
- 4) Dispose.

This hierarchy is intended to preclude the use of front or rear loading packer vehicles for Bulky Items, unless the compaction mechanism is not used to compact the Bulky Items, unless such items have been designated for Disposal.

#### **4.1.17 Disposal of Electronic and Other Special Wastes**

Contractor shall divert waste requiring special handling, such as Electronic Waste Collected in accordance with Sections 4.1.15, 4.1.16 or 4.5.6, or by other means under this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

Contractor may encourage Customers through public education materials to bring small items requiring special handling, such as fluorescent bulbs or batteries, to a local HHW drop-off center, but will properly process such material received through the provision of services under this Agreement at no additional charge.

#### **4.1.18 Optional On-Call Household Hazardous Waste Collection and Disposal**

Contractor shall implement a door-to-door HHW Collection program if requested by City within ninety (90) days of such a request. Contractor shall receive a rate increase, as specified in the approved rate schedule, of \$0.45 per dwelling unit per month, applicable when the service becomes available to Residential Customers. Prior to program implementation, this \$0.45 shall be recalculated to include the annual percentage rate increases approved by the City for the monthly Residential Cart Collection rate. For billing purposes, the City may direct Contractor to either add this HHW charge in with the monthly Residential Collection rate, or itemize the fee as a separate cost item on the invoice.

If the City chooses to implement the door-to-door HHW Collection, City and Contractor shall meet and confer prior to implementation of this program to determine the frequency, or to establish the pre-scheduled days for door-to-door HHW collection. These pre-scheduled days can be set at up to twice per month, based on the needs of the City. Residents will call Contractor to be placed on the route for the next pre-scheduled HHW Collection day. During this call, the residents shall receive instructions as to where, when and how to place the items for Collection. Items to be Collected shall include, at a minimum: Sharps, non-controlled pharmaceuticals, paint, oil, chlorine, pool acid, pesticides, household batteries, fluorescent bulbs, and other household chemicals.

If the City elects to provide City-wide drop-off events instead of individual door-to-door Collection of HHW, in addition to provisions allowing e-waste to be included as part of Bulky Item pick-up, for no more than the same cost per dwelling unit per month, Contractor shall promote and conduct two City-wide HHW drop-off events per year. Contractor shall be responsible for securing an in-City location and for all associated event costs. Contractor may schedule the drop-off events in conjunction with the Shred Day events described in Section 4.1.20. These events would be separate from, and in addition to, any events conducted through Los Angeles County programs. Subject to City approval, Contractor may use a third-party vendor for such services, provided Contractor remains fully responsible for services provided by, and any payment to, such party. Contractor is responsible for ensuring that the vendor providing HHW Collection and proper disposal services under this section maintains all of the proper permits and insurance to provide such service.

#### **4.1.19 Restaurant Food Waste Program Option**

City may require Contractor to conduct a Restaurant Food Waste diversion pilot program upon request, at no additional charge.

#### **4.1.20 Document Shredding**

Contractor will conduct two (2) shredding events per calendar year, on City-approved days, at a City-provided location at no additional cost. City will inform Contractor of the time at which each event will begin, and each event shall last for eight (8) hours. Contractor shall be on-site for a sufficient time before and after the event to set up and clean up. Contractor shall provide staff and equipment to Collect all paper delivered by

anyone that resides or operates a business in the City. Contractor will shred paper in manner that guarantees confidentiality and destruction of the documents, and diverts the shredded material from landfilling. Contractor will publicize the event through its mailers, contacting local business groups and placing local ads.

Contractor shall provide monthly document shredding services for City facilities. Multiple sites may require servicing each month and Contractor is responsible for visiting each City facility in need of the service.

## **4.2 Recycling**

### **4.2.1 Residential Cart/Can Recycling Collection**

Contractor shall provide all Customers receiving Cart/Can Refuse Collection with a 96, 64 or 32-gallon Cart for Collection of Recyclable Materials ("Recycling Cart(s)"), and shall Collect all Recyclable Materials placed therein for Collection not less than once per week. Contractor shall Collect Recyclable Materials from each Customer on the same day as Customers' Refuse Cart/Can is Collected. Residential Customers who cannot accommodate Carts due to space constraints and/or conditions otherwise preventing the use of Carts shall continue to receive service using Contractor-provided Blue Cans ("Recycling Cans").

Recycling collection will be provided at no charge to the Residential Cart/Can Customers. Customers that regularly fill their Recycling Cart(s)/Can(s) may request additional Recycling Cart(s)/Can(s) at no additional charge.

Contractor shall have a Recycling program whereby it, at a minimum, Collects all materials that can be recovered at the local processing Facility used by Contractor. Contractor will update public education materials accordingly as new items are added to those recovered by the Facility.

### **4.2.2 Commercial Recyclables Collection**

#### **4.2.2.1 Source Separated Recycling**

Contractor shall provide Recycling services to Multi-Family Bin and Commercial Customers at rates no higher than 50% of comparable Refuse Collection rates for the same size Container and Collection frequency, in accordance with the approved rate schedule. Commercial Recyclables in Carts shall be collected on the Residential

Recyclables Cart route, and Recyclables in Bins may be Collected with mixed waste from Refuse Bins provided all such material is processed to recover Recyclables. As Commercial Recyclables tonnage will be co-Collected with other waste streams, Contractor shall provide an allocation of such tonnage on its tonnage reports, and provide allocation support upon request.

Contractor shall assist the City in meeting mandatory Commercial Recycling program requirements at no additional charge, including providing reporting that may be required. Contractor shall contact all Bin and permanent Roll-off Box Customers within the first twelve (12) months of the Agreement in an effort to establish Recycling programs. Contractor shall provide a reporting of these contacts, including whether a Recycling program was implemented as a result, and/or if the Customer indicated it already has a Recycling program in place, either through Contractor or a third party, and any other information that may assist the City in meeting the State's mandatory Commercial Recycling program requirements.

Upon request, Contractor shall provide City with a list of Residential Bin Customers, and all Customers generating the State's threshold for participation in mandatory Commercial Recycling (currently four-cubic-yards or more of Solid Waste generated per week), that do not subscribe to a Recycling program offered by Contractor or, if known, a third-party.

#### **4.2.2.2 Downtown Compactor Facility Solid Waste Processing**

Contractor shall process all Solid Waste Collected from the Downtown Compactor Facility, removing non-compostables and composting the remainder of the Solid Waste for diversion credit.

#### **4.2.2.3 Bin and Roll-Off Waste Processing**

Contractor shall send to a MRF for processing all Solid Waste Collected in Bins and Roll-Off Boxes not covered under Section 4.2.2.2 to recover Recyclables prior to landfilling.

#### **4.2.3 Warning Notice**

Contractor shall place a red tag or other warning notice approved by the City on all Refuse, Recyclable Material or Green Waste loads that are contaminated, indicating to

the Customer why the load was not Collected and, if applicable, diverted, or if the Recycling or Green Waste Container was sufficiently contaminated that it had to be Collected as Refuse, and providing Contractor's phone number. For Customers with off-site management such as small apartment buildings, Contractor shall also mail a copy of the warning to the Customer's Billing address. Contractor shall notify City on a monthly basis of any warning notices issued pursuant to this section, and shall provide copies of such warnings to City upon request. With prior written City authorization, Contractor may remove Recycling and Green Waste Containers from habitual contaminators that have received a total of three (3) warnings on a Container in any six-month period. Recycling and Green Waste Containers will be returned after six (6) months, or upon direction of the City, or if there is a change of occupancy.

Contractor will visually inspect the contents of Residential Refuse Carts and, if significant Recyclable Materials are found, leave a notice educating Customer to better separate Recyclable Materials from Refuse.

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

Contractor shall be responsible for marketing and sale of all Recyclable Materials Collected pursuant to this Agreement. Contractor may retain revenue from the sale of Recyclable Materials, and shall report the amount of such revenues to City upon request.

#### **4.2.5 Minimum Recycling Requirements**

Contractor shall divert from landfilling a minimum of fifty percent (50%) of all Solid Waste it Collects under this Agreement. Recycling of materials not Collected by the Contractor is not to be counted towards meeting this requirement. For the purposes of this section, diversion includes Recycling, Transformation and other forms of converting Solid Waste into energy to the extent that such diversion is accepted by the State toward meeting the City's diversion goal under AB 939.

#### **4.2.6 Construction and Demolition Debris Diversion**

Contractor shall divert a minimum of seventy percent (70%) of all Construction and Demolition Debris Collected. Contractor will bring all loads of mixed Construction and Demolition Debris to a construction and demolition debris processing facility for separation and recovery of this material.



Contractor shall provide a dedicated customer service representative focused on providing support for construction and demolition projects who will work with each Customer to provide the correct services and service levels that ensure the highest feasible diversion at the lowest cost to the Customer.

#### **4.2.7 Battery Recycling Drop-Off**

Contractor shall provide containers at a minimum of four locations, such as City Hall, as identified by City for the drop-off of household batteries by residents. Contractor shall Collect batteries at least monthly, or more frequently if needed, and provide for proper disposal. This program shall be provided at no additional charge to City, rate payers or participants.

### **4.3 Green Waste Program**

#### **4.3.1 Single Family Green Waste Collection**

Contractor shall provide all Customers receiving Cart Refuse Collection who opt to receive Green Waste service with 96, 64 or 32-gallon Cart(s), as requested, for Collection of Green Waste ("Green Waste Cart(s)"). Green Waste service shall only be provided using Carts, not Cans. See Section 4.4.1.1 for Cart distribution.

Customers shall be charged for Green Waste Cart Collection based upon the number and size of Green Waste Carts requested in accordance with the approved rate schedule.

Contractor shall Collect all Green Waste placed in Green Waste Carts, as well as all Green Waste bundled as set forth below, and put out for Collection by Customers paying for service not less than once per week. Contractor shall, at a minimum, Collect and divert the types of Green Waste defined in Section 1.29. Upon closure of the Puente Hills Landfill, Athens will accept and divert from landfilling Food Waste placed in Green Waste Carts, along with Green Waste, with no increase in rates for the addition of Food Waste to the Green Waste program other than the adjustment to Green Waste Cart rates permitted per Section 6.4.4 for the change in Green Waste facilities (from Puente Hills Landfill which could not accept Food Waste in Green Waste to a Facility that does).

As soon as, and for as long as, Food Waste is permitted for Collection in the Residential Green Waste Cart, the City's public schools administered by the Hermosa Beach City School District shall have the option of participating in this program at no cost to the City or schools. Contractor shall provide as many Carts to the schools as necessary to Collect their Food Waste, and such Carts shall be Collected on the Residential Green Waste Cart route.

Contractor shall only be obligated to Collect Green Waste set out for Collection in bundles if bundles are each a maximum of four (4) feet long and eighteen (18) inches in diameter.

Green Waste will be Collected from all subscribing Customers on the same weekday, initially determined to be Tuesday; the selected weekday shall be the day on which Customers with the greatest potential generation of Green Waste have their Refuse and Recyclables Collected, and any change in this day will be mutually agreed to in writing by the City and Contractor. At City's sole discretion, Refuse Cart Customers with Refuse Collection on other weekdays may participate in the Green Waste program at the same rates, placing their Green Waste Carts out for Collection on Green Waste Collection day, or may not be provided the opportunity to opt-in in order to avoid Collection trucks on those Customers' streets on a second Collection day each week.

#### **4.3.2 Holiday Tree Collection Program**

Contractor shall operate an annual holiday tree Collection program, Collecting all holiday trees placed out for Collection on Collection day by Residential Cart/Can or Bin Customers for a minimum of three weeks following December 25. After this period, trees will be Collected as Bulky Items under Section 1.6. Trees up to six (6) feet in length will be Collected and diverted without Customers needing to cut them. Contractor may request that Customers with larger trees cut the trees to pieces no longer than six (6) feet.

In addition to the above curbside program, Contractor shall provide three (3) roll-off boxes for tree drop-off at City-specified locations during the three (3) weeks following December 25.

Contractor will divert all holiday trees from landfilling, with the exception of trees that cannot be diverted due to flocking, tinsel or ornaments.

### **4.3.3 End Uses for Green Waste**

Contractor shall divert Green Waste materials Collected through weekly Cart and bundle Collection, and holiday tree Collection from Disposal. Contractor must provide end uses for Green Waste that maximize Diversion credits for City according to regulations established by CalRecycle. Green Waste may be used as alternative daily cover at landfills, or "ADC," only to the extent that the City will get full Diversion credit for its use. Contractor is responsible for monitoring how the Green Waste will be diverted at selected facilities and for selecting alternative facilities if necessary to ensure full Diversion credit. Failure to do so places the Contractor in default. City has the option, but not obligation, to direct Contractor where to deliver the material.

### **4.3.4 Backyard Compost Program**

Contractor shall offer composting bins and worm bins to each Residential Customer that requests one, and bill the Customer a co-pay in an amount to be determined by City. Contractor shall obtain written City approval prior to ordering bins, and City may select the bins. The difference between the amount billed to the Customer and the actual cost of the bin to the Contractor (excluding delivery or other associated costs) shall be reimbursed to Contractor by the City. City may inform Contractor as to an annual cap or overall cap on the number to be distributed.

At no additional cost, Contractor shall offer composting classes at least twice per year, and will create and make available a brochure that educates Customers on composting. If requested by the City, Contractors will include presentations by nutritional experts and other guest speakers at the compost classes.

### **4.3.5 Free Compost Give-A-Way Events**

Contractor shall conduct a compost give-a-way event twice each calendar year at no additional charge. Dates must be approved in advance by the City, which may require Contractor to select alternative dates. Location to be arranged by Contractor, subject to City approval. Contractor shall promote events through its mailings, website and other outlets. Contractor shall provide, at no cost to City, ratepayers or participants, two 40-cubic yard containers of compost to the event. Contractor shall provide sufficient staff to operate the event in an orderly manner and to assist residents in transferring the compost into resident-provided containers.

#### **4.3.6 Free City Compost**

Contractor shall provide 100 cubic yards of compost per year for City usage at no cost, and offer the City additional compost above this limit at Contractor's cost. Contractor shall deliver compost at locations and times coordinated with City; deliveries may be at multiple locations at different times.

#### **4.3.7 Residential Food Waste Pilot Program**

Contractor shall provide a three-month pilot program including Residential Green Waste Program Customers, but not less than ten percent (10%) of the City's Residential Refuse Cart Collection Customers, for the Collection and Diversion of Food Waste. The program shall consist of educating participating residents to place Food Waste in their Green Waste Cart(s) for Collection on their regularly scheduled Green Waste Cart Collection day. Contractor shall collect tonnage data from participants before and during the pilot program period for comparison, and shall survey participants for feedback on program. This pilot program shall be conducted at no additional cost to City or ratepayers, and will be conducted at a time requested by City. (See Section 4.3.1 for conversion to City-wide Residential Food Waste Diversion program at closure of the Puente Hills Landfill.)

The public schools in the City of Hermosa Beach shall be provided the option of participating in this, or any, Food Waste pilot program at no cost to the City or schools. The schools shall be provided sufficient Carts to accommodate the Food Waste generated by the schools. The schools need not add Green Waste to the Carts.

### **4.4 Container Selection, Distribution and Exchanges**

#### **4.4.1 Containers**

##### **4.4.1.1 Residential Container Distribution**

All Carts and Contractor-provided Cans shall be new at the start of service.

Contractor shall mail a return postage paid postcard and information describing the new rate structure and Container options to all Residential Customers. Contractor must obtain City approval of post card and information to be sent prior to distribution. Postcard will provide Customers with an opportunity to select the size and number of Refuse Containers, and Recycling and Green Waste Carts to be delivered.

If a selection is not made, Customers will receive one 64-gallon Refuse Cart and one 64-gallon Recycling Cart. No Green Waste Carts will be distributed to Customers who did not request one.

After initial Container distribution, Customers may request one (1) Container exchange at no charge within the six (6) months of the distribution, and once per year thereafter. After one (1) exchange per year at no charge, Customers may request Container exchanges in accordance with the approved rate schedule. One exchange includes all Container adjustments requested at one time, and multiple Containers and types (Refuse, Recycling, Green Waste as applicable) may be exchanged.

In areas where Contractor cannot provide automated service due to right-of-way constraints (see Exhibit 10) and therefore Refuse Carts are not practical, Containers shall be provided by Contractor for Refuse and Recycling.

In addition, upon request and/or when a Customer expresses concern that he/she cannot accommodate anticipated Carts, Contractor will visit and work with Customers at their residences to demonstrate how the Carts can be stored and wheeled to the point of Collection where operationally feasible.

Should Customers not be able to accommodate Carts to be distributed, Contractor shall work with the Customer to provide a Container(s) to meet any legitimate space constraints or any difficulties in moving Containers from storage to Collection point. Note that a rate for manual service is included in the rate schedule, to be applied when Cart service is not feasible. (See Section 4.1.2 - if Contractor and Customer dispute Cart versus manual/barrel service, City shall make the final determination.)

#### **4.4.1.2 Removal of Existing Containers**

Upon and after distributing new Refuse, Recycling and Green Waste Carts, Contractor shall remove, and Recycle to the extent possible before Disposing, all Customer-provided Cans, if Customer does not intend to retain the Cans. Contractor will also remove prior hauler's Containers if prior hauler does not remove them. Contractor shall establish and advertise a system whereby Customers can indicate what Cans should and should not be removed. Prior to advertising removal of Containers, Contractor shall confer with prior hauler regarding coordination of removal and disposal of prior haulers' Containers. If agreement cannot be reached, the City shall make the final decision. Contractor is responsible for all costs associated with Container collection and

Disposal or Recycling. Contractor may retain any scrap value received from the Recycling of collected Containers.

#### **4.4.1.3 Container Design Requirements**

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. Cans shall comply with this section and the design and performance requirements as specified below as applicable. All Containers selected shall be subject to City approval.

#### **4.4.1.4 Capacity**

Contractor shall provide Carts in 96-, 64- and 32-gallon sizes for Refuse, Recycling, and Green Waste Carts, 20-gallon for Residential Refuse, and 18-gallon for Commercial Recycling. Section references to Cart sizes of 18, 20, 32, 64 and 96-gallons are approximate. Acknowledging the different sizes provided by the various Cart manufacturers, the Carts shall be uniform in appearance and must conform to the following ranges in size:

- 20 to 29-gallons (18 to 29-gallon for Commercial Recycling),
- 30 to 35-gallons,
- 60 to 70-gallons, and
- 90 to 101-gallons.

#### **4.4.1.5 Container Handles**

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

#### **4.4.1.6 Container Lid**

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

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

#### **4.4.1.7 Container Colors**

The Refuse, Recycling and Green Waste Containers will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container, including replacement Containers distributed throughout the Term. Refuse Carts/Cans will be black. Recycling Containers will be blue. Green Waste Carts will be green.

#### **4.4.1.8 Container Markings**

Containers shall be hot stamped. All markings must be approved by City prior to ordering. Graphics indicating which materials may and may not be placed in each Container and instructions on how to properly dispose of HHW, shall be included on the Container lid. Information shall be bilingual in English and Spanish. Labels shall include Contractor's name and phone number, and the phone number for the proper disposal of HHW and Bulky Items. Containers shall provide street addresses as required by the Hermosa Beach Municipal Code to ensure correct billing.

#### **4.4.2 Container Performance Requirements**

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

##### **4.4.2.1 Cart Load Capacity**

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

<b>Size (Gallons)</b>	<b>Minimum Load Capacity (LBS)</b>
<b>90-101</b>	<b>200</b>
<b>60-70</b>	<b>130</b>
<b>30-35</b>	<b>70</b>
<b>18 or 20-29</b>	<b>70</b>

##### **4.4.2.2 Container Durability**

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

- Maintain their original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with the intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);



- The bottoms of Containers' bodies must remain impervious to any damage that would interfere with the Containers intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;
- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,
- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

#### **4.4.2.3 Chemical Resistant**

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

#### **4.4.2.4 Stability and Maneuverability**

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

Containers shall be capable of maintaining the upright position in sustained or gusting winds of up to twenty-five (25) miles per hour as applied from any direction.

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

#### **4.4.2.5 Lid Performance**

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;
- Remain closed in winds up to twenty-five (25) miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the

original designed and intended positions when either opened or closed or any position between the two extremes; and,

- Lid shall be designed and constructed such that it prevents physical injury to the user while opening and closing the Cart.

Can lids shall maintain their shape and functionality, and be designed to remain in place, remain closed in winds up to twenty-five (25) miles per hour from any direction, and through repeated opening and closing of the lid by residents or in the dumping process as intended.

#### **4.4.2.6 Reparability**

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

#### **4.4.3 Container Ownership and Maintenance Responsibilities**

All Containers that are distributed by Contractor under this Agreement remain the property of the Contractor at the end of the Agreement term. The Contractor shall be responsible for Container repair and maintenance, and replacing lost, stolen or damaged Container within three (3) business days at no additional charge to the Customer or to the City. Graffiti shall be removed or the Container replaced within twenty-four (24) hours of request by City or Customers. However, the Contractor may charge, subject to City approval, the Customer for repairing or replacing a Container if the damage was due to the Customer's willful negligence or abuse. In no event shall this charge be greater than the Contractor's actual cost for replacement parts or the new Container.

#### **4.4.4 Bins**

Contractor shall provide Customers with Bins for Collection of Solid Waste. Customers may obtain Bin compactors and Roll-off compactors from either Contractor or a third party; the leasing of such equipment is outside the scope of this Agreement. Contractor shall maintain its Bins in a clean, sound condition free from putrescible residue. Bins shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which

were designed for movement, loading, or unloading of the Bin, shall be maintained in good repair.

Contractor shall periodically inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Contractor shall perform cleaning or replacement of Bins more frequently if necessary, in accordance with the approved rate schedule, to prevent a nuisance caused by odors or vector harborage and to check for leaks and damage. Contractor shall replace any leaking or damaged bins or lids within five (5) working days of observed damage or by request by the tenant or City at no charge. If free liquids are observed in bins, Contractor shall promptly notify Customer that free liquids are not permitted, and notify City on second such observation.

Customer may request additional cleanings in accordance with the approved rate schedule. Contractor shall remove graffiti at no additional charge from any Bin within twenty-four (24) hours of request by City or Customers. All Bins provided by Contractor shall remain the property of Contractor.

Each Bin placed in the City by the Contractor shall have the name and phone number of the Contractor in letters not less than three (3) inches high on the exterior of the Bin so as to be visible when the Bin is placed for use. Contractor shall repaint Bins upon City request.

To limit the possibility of leakage, Contractor shall provide Bins with plastic liners or plastic Bins at no additional cost to Customers whose Solid Waste may include liquid, organic, or other wet waste. Such Bins shall be supplied upon request; Contractor reserves the right to first make a site visit to confirm the nature of the waste generated, with the City making the final determination as to the necessity of a plastic Bin or Bin liner.

Following Collection, Bins shall be returned to enclosures with lids closed.

#### **4.4.5 Roll-off Boxes**

The Contractor shall provide clean Roll-off Boxes, free from graffiti, equipped with reflectors, and shall have the name and phone number of Contractor in letters not less than three (3) inches high on the exterior of the Roll-off Box so as to be visible when the Container is placed for use. Contractor shall properly cover all open Roll-off Boxes

during transport as required by the State Vehicle Code. Contractor shall replace any leaking or damaged Roll-Off Boxes within five (5) working days of observed damage or by request of the tenant or City at no charge. If free liquids are observed in Roll-off Boxes, Contractor shall promptly notify Customer that free liquids are not permitted, and notify City on second such observation.

Graffiti shall be removed within twenty-four (24) hours of request by City or Customers. All Roll-Off Boxes provided by Contractor shall remain the property of Contractor.

## **4.5 City Services**

### **4.5.1 City Facilities Collection**

Contractor shall Collect and dispose of all Refuse, Recyclable and Green Waste material put in Containers for Collection at Premises owned and/or operated by the City now and in the future at no charge, including no charge for locking Bins, scout service, push-out service or other special services. Contractor shall ensure a sufficient number of Solid Waste Containers are provided at all City facility locations to meet Collection needs. Service levels, facility locations, and number of facilities serviced may increase during the Term of this Agreement without any additional compensation paid to the Contractor. Such Premises include, but are not limited to, City Hall, City offices, parks, community facilities, City yard, public litter and Recycling Containers (see Section 4.5.2), and street maintenance operations. Collections shall be scheduled at a time mutually agreed upon by Contractor and City.

Construction and demolition debris collected from City facilities and projects must be processed in accordance with Section 4.2.6 for maximum diversion credit at no additional charge.

Notwithstanding, Collection of refuse and debris by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), and other similar catastrophic events shall be charged at the contractual rates or rates otherwise negotiated with the City at the time.

Street sweepings, as placed in a Container at the City yard by the street sweeping company, shall be collected and Disposed by the Contractor at no additional charge.

Contractor shall provide in-office Recycling Containers at all City facilities, including but not limited to the fire station and community center, upon request, including desk-side Recycling Containers and larger cans for Collection in common areas.

Contractor shall visit City facilities prior to the start of service under this Agreement and meet with City staff to fully understand City facilities service needs and to recommend and implement improvements, if any.

#### **4.5.2 City Litter Containers**

##### Prior Consolidated Disposal Service-Serviced City Litter Containers

Contractor shall service all City Refuse and Recycling public litter Containers identified in Exhibit 4 as Recycling and Refuse Containers previously managed by Consolidated Disposal Service at the following minimum frequencies:

- a) At Least Once Per Day - Collect all Refuse Containers, between Memorial Day weekend and Labor Day, located along the beach, along Pier Avenue west of Ardmore, and in the Downtown Pier area between 10<sup>th</sup> Street and 15<sup>th</sup> Street.
- b) At Least Once Per Day - Collect all Recycling Containers, between Memorial Day weekend and Labor Day, located along the beach, along Pier Avenue west of Ardmore, and in the Downtown Pier area between 10<sup>th</sup> Street and 15<sup>th</sup> Street.
- c) At Least Once Per Week - Above referenced Containers from after Labor Day until immediately before Memorial Day weekend, and all other Refuse and Recycling Containers.
- d) At Least Twice Per Week - Collect all Containers on Hermosa Avenue, Herondo Street, Greenwich Village, Longfellow Avenue and Aviation Boulevard.
- e) At Least Once Per Week - Collect all Containers on Prospect Avenue and Pacific Coast Highway.
- f) At Least Three Times Per Week - Collect all Recycle Containers at all parks and Community Center.
- g) Holiday Service - Contractor's servicing of all City Litter Containers includes servicing on holidays.

### Athens/Contractor and True Green-Serviced Litter Containers

Contractor shall assume Collection responsibility for all Refuse and Recycling public litter Containers identified in Exhibit 4 as serviced by True Green and by Contractor under a separate contract (see Exhibit 4 for identification of specific Containers). These Containers shall be Collected at the following minimum frequencies:

- a) At Least Seven Days per Week - Containers in the Downtown Area and on the Pier currently serviced by Contractor.
- b) At Least Three Days per Week - All other City litter Containers previously serviced by True Green in the Greenbelt, Parks and Community Center.

City will provide Containers. Contractor shall provide all liners necessary to provide Collection service. Contractor is responsible for additional Collections as necessary to prevent Container overflow at no additional charge, including more frequent Collections on holiday weekends. City may add additional Recycling Container Collections at no additional charge; a Recycling Container may be paired with each litter Container in distribution. City may increase the number of Refuse Containers to be Collected by Contractor up to 10% above the number included in Exhibit 4 at no additional charge. Contractor and City shall negotiate in good faith for the servicing of additional Containers above this limit, in the future at the request of City.

City reserves the right to have a third party service additional Containers. Solid Waste that may be Collected by third-parties from City public Refuse and Recycling Containers may be delivered to the City facilities for processing and Disposal by Contractor at no additional charge as part of City facilities Collection.

#### **4.5.3 School Facilities Collection**

Contractor shall Collect and dispose of all Refuse, Recyclable and Green Waste material put in Containers for Collection at all public school facilities at no charge, including no charge for locking Bins, scout service, push-out service or other special services. Service levels and number of facilities serviced may increase during the Term of this Agreement without any additional compensation paid to the Contractor. Collections shall be scheduled at a time mutually agreed upon by Contractor and City.

#### **4.5.4 Special Events**

Contractor shall provide litter/Recycling boxes and liners for Refuse and Recyclables Collection to City upon request at no additional charge for use at all City-sponsored and select other in-City events, including but not limited to:

- New Year's Eve (not event, to address increased pedestrian activity);
- California Coastal Cleanup;
- Sunset Concert Series;
- Ark Walk;
- St. Patrick's Day Parade; and,
- Surfer's Walk of Fame.

Recycling boxes should be easily distinguishable from Refuse boxes, and labeled to facilitate proper use by event participants. City crews may transport waste from these events and other in-City events to existing Bins and Roll-Off Boxes located at City yard or parks for servicing by Contractor under Section 4.5.1. If events are not listed in this section or otherwise sponsored by the City, Contractor may charge for litter boxes and liners in accordance with the approved rate schedule.

#### **4.5.5 Emergency Collection and Disposal Service**

Contractor will assist City at the City's request with emergency Collection and Disposal service (in the event of major disaster, such as an earthquake, storm, riot or civil disturbance), or as otherwise determined necessary by the City, by providing Collection equipment and drivers normally assigned to City. Contractor may charge City for actual Disposal costs plus service rates per the approved rate schedule.

#### **4.5.6 Abandoned Item Collection**

Because time is of the essence, City crews will typically Collect items abandoned in the City and dispose of those items at City yard. Contractor will Collect such items from City yard and properly divert from landfilling or dispose of such items in accordance with Sections 4.1.16 and 4.1.17. To assist City crews, City may request that Contractor Collect abandoned items within 24 hours of request up to four times per month at no additional charge.

#### **4.5.7 Large Venue Event Assistance, Event Recycling**

Contractor will assist planners of large venue events with reporting and planning needs as may be both useful in meeting the requirements of AB 2176, and in lowering Disposal quantities generated at, and reducing litter at, large venue and other events on City property for which a permit is required by the City at no additional charge. Contractor shall take a proactive role in Solid Waste planning for large events. When informed by City as to an upcoming event, Contractor shall contact event planners to initiate Solid Waste Collection planning. Contractor shall provide Recycling services upon request to special event planners in accordance with Section 4.2.2.

#### **4.5.8 Litter Boxes for Non-City-Sponsored Events**

Contractor must make cardboard litter boxes and liners available for purchase for all non-City-sponsored events in accordance with the approved rate schedule.

#### **4.5.9 Code Enforcement Assistances**

City may request Contractor assistance with code enforcement, including reporting of container and enclosure issues and potential Solid Waste-related health and safety code violations. See Section 2.2 for code enforcement assistance regarding illegal hauling.

#### **4.5.10 Capacity Guarantee**

Contractor guarantees capacity at its processing facilities for all Solid Waste Collected under this Agreement.

#### **4.5.11 Toy Drive Assistance**

Contractor shall assist with an annual toy drive as directed by City, delivering to a City-identified location, and later removing, a clean, covered, water-tight lockable, walk-in roll-off box suitable for the Collection of toys.

#### **4.5.12 South Bay Work Investment Board**

Contractor will work with the South Bay Work Investment Board ("SBWIB"), to identify, interview, and hire SBWIB-provided candidates who meet Contractor's hiring qualifications.



### **4.5.13 Dog Waste Program**

Contractor shall provide bags to the City for dog waste dispensers located in the City. City crews will place the bags in the dispensers. Bags will conform to the City's dispensers, but Contractor may place its logo, educational information or other suitable communications on the bag approved by the City.

## **4.6 Operations**

### **4.6.1 Schedules**

#### **4.6.1.1 Collection Days and Hours**

To preserve peace and quiet, Solid Waste shall only be Collected between 7:00 a.m. and 6:00 p.m. Residential collection is only permitted Monday through Thursday (with an exception for collection postponed to Friday during a holiday week as described below); Commercial collection is permitted seven (7) days a week. Contractor may not make exceptions to these Collection days and times without advanced written approval from the City.

If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day, Collection days for the remainder of that week shall all be postponed one Collection day, with the exception of service in the Downtown Area. Contractor shall continue providing scheduled service in the Downtown Area on holidays, and shall provide extra pickups as necessary, to prevent overflowing Containers on holiday weekends. See Section 4.1.13.

#### **4.6.1.2 Review of Schedules and Routing**

Contractor shall review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with City within 45 days of the effective date of this Agreement, and subsequently upon thirty (30) days written notice requesting said review. Contractor shall submit a copy of its Commercial and Residential Collection schedule and route map within seven (7) days if requested by City. If the plan is determined to be inadequate by City, Contractor shall revise it, incorporating any changes necessary to make it satisfactory to City within thirty (30) days.

No change in schedules and routing shall be implemented for fifteen (15) days after Contractor receives approval from City and notifies Customers. No significant route changes may be made by Contractor without prior approval by City.

#### **4.6.1.3 Missed Pickups**

If a missed pickup of Refuse, Recycling and/or Green Waste is reported to the Contractor by 3:00 p.m., the Contractor shall collect it on the same day. If a missed pickup is reported after 3:00 p.m., the Contractor shall make up the collection by noon of the next business day.

#### **4.6.2 Vehicles**

**A. General.** The Contractor shall provide Collection vehicles sufficient in number and capacity to efficiently perform the work required by this Agreement in strict accordance with its terms as described in this Agreement. Any additional vehicles/routes that may be required to meet the service standards during the term of this Agreement shall be added at the Contractor's sole expense. The Contractor shall have available on Collection days sufficient back-up vehicles for each type of Collection vehicle used to respond to complaints and emergencies.

**B. Specifications.** All route vehicles shall use compressed natural gas ("CNG") or liquefied natural gas ("LNG") within six months of the start of service under this Agreement. Contractor shall be in compliance with all rules and regulations currently in force or passed during the Agreement Term, including South Coast Air Quality Management District ("SCAQMD") and the Air Resource Board's regulations, in regards to all vehicles used in the City. No rate adjustments shall be made for such changes in law. All vehicles used by the Contractor in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law. If SCAQMD Rule 1193 is determined to apply to the City of Hermosa Beach, Section 1193(d)(4)(B) would be applied for Roll-Off vehicles.

All route vehicles shall be no older than fifteen (15) years at any point during the Term of the Agreement.

Contractor shall provide sufficient numbers of Collection vehicles no larger than a scout truck of GVM - 6,400 lbs., L-212' x W-92" x H-75", wheel base-118" and/or a small side loader of GVM-19,500 lbs., L-273" x W-96" x H-121", wheel base-178.5" to service narrow streets and alleys North of 27<sup>th</sup> Streets and other difficult areas where standard size Collection vehicles cannot easily and safely service Customers.

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

**D. Collection Vehicle Billboards.** City reserves the right to request that Contractor install frames on its Collection vehicles for placement of City billboards. City would be responsible for the cost of developing the billboards and providing the billboards to Contractor for mounting. City has the exclusive right to promote City events and provide public information through the use of billboards on Collection vehicles.

**E. Cleaning and Maintenance**

- 1) Contractor shall maintain all of its properties, vehicles, Facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times, and compliant with all federal, State and local laws.
- 2) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam-cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any commercially reasonable time to determine compliance with this Agreement. The Contractor shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Contractor agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

- 3) Contractor shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three (3) years.
- 4) The Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles that are leaking or in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Contractor shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.
- 5) Contractor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any other cause so as to maintain all equipment in a safe and operable condition. The Contractor shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.
- 6) Upon request by the City, the Contractor shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

**F. Operation**

- 1) **Vehicles.** Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.
- 2) **Noise.** Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205, and other applicable noise control regulations, and shall incorporate noise control features throughout the entire

- vehicle. In no event shall the noise level of equipment used for Collection exceed seventy-five (75) dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Contractor shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Contractor shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.
- 3) **Damage.** Contractor shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.
- G. City Inspection Per Code.** The City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with applicable codes, and its return to service has been approved by the City.
- H. Brake Inspections.** The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law, but not less than annually, by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for suspension or terminating this Agreement.
- I. Correction of Defects.** Following any inspection, the City Manager shall have the right to cause the Contractor, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The City Manager's determination may be appealed to the City Council, and its decision shall be final.

### 4.6.3 Litter Abatement

**A. Minimization of Spills.** Contractor shall use due care to prevent Solid Waste or fluids from leaking, being spilled and/or scattered during the Collection or transportation process. If any Solid Waste or fluids leak or spill during Collection, Contractor shall promptly clean up all such materials. Each Collection vehicle shall carry a broom, shovel, absorbent, and containment materials at all times for this purpose.

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

**B. Clean Up.** During the Collection or transportation process, Contractor shall clean up all litter spilled during Collection or otherwise caused by Contractor. Contractor shall leave a "red tag" notice for Customer if litter not caused by Contractor is found in Container enclosure or around Containers. For litter due to overflowing Bins, Contractor may address habitual offenders in accordance with Sections 4.1.3 and 4.1.7.

In the event of a spill of materials (vehicle fluids, leachate, etc.), Contractor shall provide a cleanup of the spill to the satisfaction of City and other governing agencies. Cleanup methods may include pressure washing (Contractor must capture and reclaim water) or other similar clean-up methods.

**C. Covering of Loads.** Contractor shall properly cover all open debris boxes during transport to the Disposal Site.

**D.** Maintenance of Roll offs, Bins and

### 4.6.4 Personnel

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

**B. Hazardous Waste Employee Training.** Contractor shall establish and vigorously enforce an educational program which will train Contractor's employees in the identification of Hazardous Waste. Contractor's employees shall not knowingly place such Hazardous Waste in the Collection vehicles, nor knowingly dispose of such Hazardous Wastes at the processing Facility or Disposal Site.

**C. Customer Courtesy.** Contractor shall train its employees in Customer courtesy, shall prohibit the use of loud or profane language, and shall instruct Collection crews to perform the work quietly. Contractor shall use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, Contractor shall take all necessary corrective measures including, but not limited to, transfer, discipline or termination. If City has notified Contractor of a complaint related to discourteous or improper behavior, Contractor will consider reassigning the employee to duties not entailing contact with the public while Contractor is pursuing its investigation and corrective action process.

**D. Compliance with Local Laws.** Contractor and its employees shall comply with all local laws when conducting business in the City. No smoking is allowed within vehicles, and all smoking materials that are allowed shall be properly disposed of; no smoking materials or other trash shall be discarded in any location except approved trash or recycling containers. Employees and subcontractors shall comply with all other laws or regulations pertaining to franchisees or the public generally.

**E. Unauthorized Material Removal.** Contractor shall dismiss or discipline employees who remove documents or any other material from Containers, other than specifically for the purposes of Disposal and Diversion as described in this Agreement.

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

**G. Compliance with Immigration Laws.** Contractor shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement. Contractor warrants and represents that all of its employees, including any and all prospective employees hired to perform services for the City under this Agreement and the employees of any subcontractor retained by the Contractor to

perform a portion of the services under this Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all applicable state and federal laws, rules and regulations.

**H. Scavenging, Code Enforcement.** Contractor shall train full time employees working in the City to work with local law and code enforcement to assist, and/or receive direction from, City to write warnings, to educate scavengers and Residents about proper Recycling, and to monitor the streets in the morning hours.

#### **4.6.5 Identification Required**

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

City reserves the right to perform a security and identification check through the City's Police Department on the Contractor and all their present and future employees employed by Contractor to work in the City, in accordance with accepted procedures established by City, or for probable cause.

#### **4.6.6 Fees and Gratuities**

Contractor shall not, nor shall it permit any agent, employee, or subcontractors employed by it to accept or request, solicit or demand, either directly or indirectly, any compensation or gratuity for services authorized to be performed under this Agreement except as described in this Agreement, in accordance with Exhibit 2 as updated and approved by City throughout the Term of the Agreement.

#### **4.6.7 Non-Discrimination**

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



#### **4.6.8 Routing and Coordination With Street Sweeping Services**

Contractor shall provide all routes and route schedules to the City and work with the City to resolve conflicts with street sweeping schedules.

#### **4.6.9 Report of Accumulation of Solid Waste; Unauthorized Dumping**

Contractor shall direct its drivers to note (a) the addresses of any Premises at which they observe that Solid Waste is accumulating and is not being delivered for Collection; and (b) the address, or other location description, at which Solid Waste has been dumped in an apparently unauthorized manner. Contractor shall deliver the address or description to City within one (1) working day of such observation.

#### **4.6.10 Municipal Separate Storm Sewer System Protection**

Contractor shall conduct all aspects of work in accordance with municipal codes in a manner that prevents the discharge of non-stormwater and minimizes the discharge of pollutants in stormwater to the municipal separate storm sewer system (MS4) which includes paved streets, driveways, alleys, gutters, ditches, manmade channels, catch basins, yard or area drains connected to the street, etc. Any discharge that would result in or contribute to a violation of the Municipal Separate Storm Sewer System (MS4) NPDES permit, Order No. 01-182 and any subsequent amendments or reissued permit by the Los Angeles Regional Water Quality Control Board (Regional Board) is prohibited in accordance with the federal Clean Water Act. Liability for any such discharge including penalties levied by the Los Angeles Regional Water Quality Control Board shall be the responsibility of the contractor whose personnel caused or were responsible for the discharge. All non-storm water discharges to the MS4 are prohibited unless specifically exempted by the MS4 NPDES Permit or by the Regional Board Executive Officer.

### **4.7 Transportation of Solid Waste**

Contractor shall transport all Solid Waste Collected to an approved Facility per Section 4.8 (e.g. Transfer Station, waste-to-energy Facility, Green Waste Processing Facility, MRF, Disposal Site).

Contractor shall maintain accurate records of the quantities of Solid Waste transported to all Facilities utilized and will cooperate with City in any audits or investigations of such quantities.

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

#### **4.8 Approved Facilities**

The approved Disposal Site for non-diverted Solid Waste is the Chiquita Canyon Landfill, Sunshine Canyon Landfill, El Sobrante Landfill and/or Puente Hills Landfill. Contractor must receive written advance approval from City to use each Transfer Station, Transformation Facility, processing Facility or other Facility used by Contractor in the fulfillment of this Agreement. Contractor is responsible for ensuring that each Facility it uses is properly permitted prior to requesting City approval to use such Facility. Unless and until the City instructs otherwise, the designated Disposal Site and other Facilities are: Athens Services Transfer Facility and MRF (City of Industry), Potential Industries (Wilmington), Chiquita Canyon Landfill (Castaic), Sunshine Canyon Landfill (Sylmar), El Sobrante Landfill (Corona), Puente Hills Landfill in Whittier, California Waste Systems (Gardena), Commerce Refuse-to-Energy (Commerce), Southeast Resource Recovery Facility or "SERRF" (Long Beach), Waste Resources Recovery (Gardena), Edco Recycling and Transfer (Signal Hill), and San Bernardino County Solid Waste Disposal sites.

#### **4.9 Status of Disposal Site**

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

#### **4.10 Dedicated Routes**

Solid Waste Collected in the City may not be commingled in Collection vehicles with Solid Waste from other jurisdictions, unless the City approves in writing of the specific commingled routes and the tonnage allocation method to be used.

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

**A. Failure to Collect.** When Solid Waste is not Collected from any Solid Waste service recipient, Contractor shall notify the service recipient in writing, at the time Collection is not made, through the use of a "red tag" or otherwise, of the reasons why the Collection was not made.

**B. Hazardous Waste Inspection and Reporting.** Contractor reserves the right to inspect Solid Waste put out for Collection and to reject Solid Waste observed to be contaminated with Hazardous Waste, and the right not to Collect Hazardous Waste put out with Solid Waste. Contractor shall notify all agencies with jurisdiction, if appropriate, including the California Department of Toxic Substances Control and Local Emergency Response Providers and the National Response Center of reportable quantities of Hazardous Waste, found or observed in Solid Waste anywhere within City. In addition to other required notifications, if Contractor observes any substances which it or its employees reasonably believe or suspect to contain Hazardous Wastes unlawfully disposed of or released on any City property, including storm drains, streets or other public rights of way, Contractor will immediately notify City Manager. Contractor shall implement and maintain a training program that will assist its employees in identifying and properly disposing of any Hazardous Waste that may come into their possession.

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

#### **4.12 Downtown Compactor Facility Development**

City shall build a Downtown Compactor Facility that, at a minimum, is a permanent, fully contained facility with utilities located in City Parking Lot A to contain the Downtown Compactor(s) and facilities required to provide solid waste services to the

Downtown Compactor Facility Service Area in compliance with regulatory requirements. Contractor shall reimburse City the costs of designing and building the Facility, estimated to be approximately \$130,000; provided that, if the City builds public restrooms at the facility, Contractor shall only be responsible for paying the costs associated with the Downtown Compactor Facility and not the public restrooms. Contractor shall reimburse City within 30 days of receipt of a written invoice from City. Failure to pay City in a timely manner shall be a material breach of this agreement. Alternatively, should the City elect not to include public restrooms in the facility, City shall have the right to assign the Contractor the responsibility for building the Facility in accordance with specifications approved by the City. In such event, Contractor shall pay prevailing wage rates in accordance with the California Labor Code. Contractor shall convey title to the facility to the City upon completion and acceptance by City. Contractor shall operate, maintain and be responsible for the Downtown Compactor Facility throughout the Term of this Agreement, including without limitation the same cleaning obligations as described for enclosure cleaning in Section 4.1.14. City shall have no obligations with respect to the Downtown Facility throughout the Term of this Agreement, provided that the City shall be responsible for maintaining and cleaning any public restrooms constructed at the Facility. Contractor shall provide all necessary utility services to the Downtown Compactor Facility and, if Contractor builds the Facility, shall be responsible for obtaining all necessary approvals and permits to construct Facility.

The City hereby grants Contractor a revocable license to enter and use the Facility Premises for the sole purpose of constructing, maintaining and operating the Downtown Compactor and Downtown Compactor Facility at the Facility Premises and to the specifications specified above and as required by the City for the Term of this Agreement. Upon expiration or termination of this Agreement, this license shall automatically become null and void, shall be of no further force and effect.

Contractor may amortize the cost to construct the Downtown Compactor Facility over a twenty (20) year period and pass those costs through to the participating businesses in the Downtown Compactor Facility Service Area in proportion to the service levels of each of those participant businesses through the business' monthly billing statement. Any amount of the amortized pass-through costs outstanding at the time this Agreement terminates or expires may be assigned to the City's subsequent Collection contractor. City shall require the subsequent Collection contractor to reimburse

Contractor in a lump sum any remaining as yet unreimbursed construction costs. In no event shall the City be responsible for paying the Downtown Compactor Facility construction costs, or any other costs associated with Downtown Compactor Facility maintenance or operation.

## ARTICLE 5

### OTHER SERVICES

#### 5.1 Customer Service

##### 5.1.1 Local Office, Response Time

Contractor shall maintain an office within City limits, for the term of the Agreement, staffed and open for Customers, at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

Contractor shall staff a toll-free telephone line to assist Customers from 7:00 a.m. to 6:00 p.m. Monday through Friday; a representative or an answering service shall be available from 8:00 a.m. to 5:00 p.m. on Saturday; a representative, an answering service or answering machine shall be available during all other hours. As an enhancement to the above requirements during certain hours, Contractor shall provide a live operator (not an automated menu leading to a representative) from 7:00 a.m. to 5:00 p.m. Monday through Friday and from 8:00 a.m. to 12:00 p.m. on Saturday. Calls received by answering service or machine shall be responded to by the next business day. Contractor shall provide City with a twenty-four (24) hour emergency number to a live person, not voice-mail.

Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days and Customers must be reasonably able to reach Contractor by telephone during these hours. Contractor shall record Customer complaints regarding Customer service personnel in accordance with Section 5.1.2. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or, with City approval, disciplined and appropriately trained.

Contractor shall be required to direct all Customers to Contractor's offices in all public outreach, including its website. Should Customers first contact City, Contractor shall pay for any extra costs associated with establishing a means of forwarding Solid Waste-related calls directly to Contractor without the need for Customers to re-dial.

### **5.1.2 Complaint Documentation**

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

Contractor shall log all complaints received, and said log shall include the date and time the complaint was received, the name, address and telephone number of the caller/complainant, a description of the complaint, the name of the employee recording the complaint and the action taken by Contractor to respond to and remedy the complaint. Log shall also include each instance that Solid Waste and/or Recyclables are not Collected, the form of notification used to inform the participants of the reasons for non-Collection, and the end result or means of resolution of the incident.

All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt, except missed pickups, which shall be addressed within the time frame described in 4.6.1.3. Contractor shall use best efforts to resolve complaints within two (2) business days. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

All Customer service records and logs kept by Contractor shall be available to City upon request. Contractor shall supply compliant log to City on a quarterly basis. City shall, at any time during regular Office Hours, have access to Contractor's Customer service department for purposes that may include monitoring the quality of Customer service or researching Customer complaints.

### **5.1.3 Resolution of Customer Complaints**

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

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

#### **5.1.4 Service Liaison/Route Supervisor**

Contractor shall designate in writing a field supervisor as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints. City shall have the right to approve the Contractor's choice for a liaison. City shall be notified in advance of any change in Service Liaison. Service Liaison shall devote a minimum of 50% of his/her time to working with the City of Hermosa Beach, and 100% of his/her time to working in the South Bay. For at least the first 90 days of service, Contractor shall devote two Service Liaisons (route supervisors) to the City 100% of the time.

### **5.2 Education and Public Awareness**

#### **5.2.1 General**

Contractor acknowledges and agrees that education and public awareness are critical, key and essential elements of any efforts to achieve the requirements of AB 939. Accordingly, Contractor agrees to take direction from City to exploit opportunities to expand public and Customer knowledge concerning needs and methods to reduce, reuse and Recycle Solid Waste, and to cooperate fully with City in this regard.

Contractor shall maintain its own program of providing information relevant to needs and methods to reduce, reuse and Recycle Solid Waste with its Bills. All public education materials shall be approved in advance by City and shall be printed in English and Spanish.

#### **5.2.2 Implementation and On-going Education Requirements**

In order to promote public education, in addition to any other materials it develops, Contractor shall create the following public education materials and programs at Contractor expense, subject to City approval and input, which will be distributed as indicated below. All of these materials and programs shall be produced and/or available in English and Spanish languages, including pictures wherever applicable. All brochures, mailings, instructional "how-to" packets, and other educational materials are to be approved by City in advance of distribution. A public education plan shall be submitted to City for review within sixty (60) days of the execution of this Agreement. This plan shall address the items described in this section.



- **Initial Mailing** – At least forty-five (45) days prior to the start of Collection service under this Agreement, Contractor will prepare and mail an initial mailing to all Customers explaining the transition from the existing Solid Waste Handling Service program to the new program as defined by this Agreement. The mailing will describe program changes, route changes if any, dates of program implementation, Recycling and Diversion programs available, and other pertinent information.
- **Instructional “How-to” Packets** – An information packet shall be provided to each Customer at the start of service under this Agreement and to each new Customer throughout the Agreement term. This packet shall: describe available services, including available Recycling and Diversion programs and their benefits; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide Billing and Customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions, and for Bulky Item pickups.

The packet should also clearly indicate what materials, such as syringes and other HHW, should not be disposed of in these Containers. This brochure shall include instructions on how Customers should dispose of HHW and Sharps, such as information on the HHW drop-off facilities, Sharps program, and other available programs.

- **Public Outreach Pieces** – Not less than twice per year during each Rate Year at Contractor’s cost, Contractor shall prepare and distribute to each Customer, either by mailing or as otherwise dictated by City a public education piece to update Customers regarding program basics, program changes, holiday schedules and other service related information. Mailings may promote and explain: all Solid Waste programs offered by City and Contractor (such as Recycling, Green Waste, holiday tree, Bulky Item Collections, annual HHW round-up) described in detail; the environmental, regulatory, and other benefits of participating in Recycling and waste minimization and reuse in general; how to properly dispose of Household Hazardous Waste such as syringes, paint, etc.; Collection schedules, including holiday schedules; Customers service numbers; or other information requested by City.

City shall determine the messages to be included in each piece and the format (brochure, door hanger, other), and shall have final approval over the pieces.

- **Article and Press Release Assistance** – Contractor shall assist the City in preparing articles and press releases related to Solid Waste services and environmental issues upon City request.
- **Corrective Action “Red-Tag” Notice** – Contractor shall develop a corrective action notification form, or “Red-Tag” notice, for use in instances where a Customer sets out inappropriate materials for Collection, that explains the appropriate manner for Disposal of such items.
- **Website** – Contractor shall develop and maintain an interactive website to enable Customers to contact Contractor, and to display holiday schedules, Sharps program information, proper HHW disposal procedures, which materials are to be placed in Recycling Containers, and other useful information.
- **Twitter Account** – Contractor shall maintain a Twitter account for the dissemination of information regarding environmental and local community news. Contractor shall offer social media consultation to any Hermosa Beach-based organization.

### **5.2.3 Contractor Representative**

Contractor shall retain on its staff an individual who shall, as part of his or her job function, routinely visit civic groups, school assemblies and science classes, homeowners’ associations, Multi-Family complexes and businesses, town hall-type outreach meetings, to promote and explain the Recycling programs Contractor offers, promote re-use and Recycling, and participate in demonstrations and civic events.

### **5.2.4 Community Events**

At the direction of City, Contractor shall participate in and promote Recycling and other Diversion techniques at community events including Earth Day, and other local activities. Such participation would normally include providing, without cost, Collection and educational and publicity information promoting the goals of City's Integrated Solid Waste Management program and give-a-ways promoting waste reduction and reuse, such as reusable bags.

If requested by City, Contractor shall conduct community disaster and emergency preparedness classes for all residents at Contractor's expense. Contractor will assist conducting and promoting community recycling drives, partnering with the City, non-profit organizations, businesses, the Chamber of Commerce and other organizations, and providing staff, containers, and container transportation for use at the events.

### **5.2.5 School Outreach**

At no additional cost, Contractor shall contact all K-12 public schools in the City of Hermosa Beach at least once per school year to offer to conduct assemblies, and to prepare and provide classroom materials (not curriculum), to educate students regarding Recycling and other Solid Waste-related topics. Materials provided shall be in sufficient quantities to service all classrooms and students for which materials are requested, and shall be subject to City approval. Contractor shall provide in-classroom and on-campus Recycling Containers at no cost to schools or City.

### **5.2.6 Business Outreach**

Contractor shall conduct a program to recognize businesses making positive environmental efforts and participating in Recycling programs. Awards will be presented annually at an annual event, Council meeting or award ceremony to be mutually agreed upon by City and Contractor, Contractor shall provide selected companies with an award to be mutually agreed upon by City and Contractor.

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

- Reduce solid waste disposal and promote recycling;
- Become energy and water efficient;
- Purchase products that are less harmful to human health and the environment;
- Minimize pollution contributions;
- Help improve indoor air quality and reduce smog formation; and,

- Educate businesses and their customers and employees about green business practices.

Contractor shall provide initial and on-going consultation and support to businesses who request it to assist in the development and continuation of their business' waste reduction and recycling programs.

### **5.2.7 Multi-Family Outreach**

Contractor will provide all property managers and Residents with Bin service with Recycling program guidelines, posters to be placed in laundry rooms, Refuse/Recyclable Container enclosures and other community areas at each building, and other outreach materials tailored to Multi-Family Bin Customer service. When contacting Multi-Family Customer building owner or property manager in accordance with Section 4.2.2, Contractor shall provide educational materials, and offer training to owner/manager in how to work with tenants to Recycle. Contractor shall provide each building owner and property manager with welcome packets for owner/manager to provide to each new resident upon move-in; packets will include information on what should be placed in the recyclables containers.

### **5.2.8 Facility Tours**

Upon thirty (30) days' notice, Contractor shall provide City Customers and organizations tours of its Recycling and other Solid Waste facilities at no cost to City, Customers or organizations.

Such tours shall not unreasonably disrupt facility operation. City shall not be charged for labor, overhead, overtime, or any other costs associated with such tours. As part of such tours, Contractor shall distribute an educational brochure, printed on recycled paper, on conservation, Recycling, and general Solid Waste management programs.

### **5.2.9 Free Mailing of City Materials**

Contractor will include in its Billing statements, at no charge to City, a City-generated semi-annual waste and recycling insert, and/or any other mailing inserts provided by City. Such material may be included on a quarterly basis at City's request. These mailings are in addition to any other Contractor public education and distribution requirements under this Agreement.

### **5.2.10 Mighty Mike Mascot**

Contractor shall provide its Mighty Mike mascot truck at City-sponsored events at no additional charge for community events. Truck should be requested by the City 30 days in advance from Contractor's Route Supervisor, Operations Manager or General Manager, and the truck will be tailored to fit the theme of the event. Contractor shall be responsible for delivery, display and demonstration of the vehicle throughout the course of the events, removal, and any other associated costs of providing this truck for such events.

### **5.2.11 Presentations to City Council**

Contractor, on request, shall present to the City Council updates on changing Solid Waste-related regulations and technologies and their potential impact on the City.

### **5.2.12 Guest Speaker and Writing Assistance**

City may require Contractor to provide guest speakers at community events and assistance with drafting written materials, such as articles and press releases, for Solid Waste-related topics.

## **5.3 Waste Generation/Characterization Studies**

Contractor acknowledges that City must perform Solid Waste generation and Disposal characterization studies periodically to comply with the requirements of AB 939. Contractor agrees to participate and cooperate with City and its agents and to accomplish studies and data collection and prepare reports, as needed and directed by City, to determine weights and volumes of Solid Waste Collected and characterize Solid Waste generated, disposed, transformed, diverted or otherwise handled/processed, by Customer type (Single Family, Multi-Family, Commercial), to satisfy the requirements of AB 939 and the City's sustainability and environmental objectives. Contractor will at its sole expense conduct such a waste generation and characterization study upon request of City, but not more than once every two (2) years.

## **5.4 Community Support**

Contractor shall support the following events:

- Sunset Concerts – through annual sponsorship

- Fiesta Hermosa – through annual sponsorship and through providing employee volunteers at event
- Hermosa Beach Murals Project – Corporate membership contribution of \$1,000
- Hermosa Beach Education Foundation – Contractor shall match contributions to this foundation made by any Contractor employee, provide four \$500 scholarships per year, and provide volunteer hours for foundation events.
- Hermosa Beach Historical Society – Business membership of \$50
- Hermosa Beach Sister Cities – Corporate membership of \$250
- Hermosa Beach Friends of the Library – Annual donation of \$500
- Hermosa Beach Friends of the Park – Annual donation of \$500
- Other non-profit organizations – Additional \$10,000 (funding or in-kind services) to be distributed to organizations as directed by the City.

#### **5.6 Neighborhood Safety Watch**

Contractor shall specially train drivers to recognize and report potentially dangerous, criminal, unusual or suspicious situations to local law enforcement.

## ARTICLE 6

### CONTRACTOR COMPENSATION AND RATES

#### 6.1 General

The maximum rates set forth in Exhibit 2, and as more fully defined as Contractor Compensation in this Article, shall be the maximum amount that Contractor may charge Customers, as full, entire and complete compensation due pursuant to this Agreement for all labor, equipment, materials and supplies, City fees, taxes, insurance, bonds, letters of credit, overhead, Disposal, transfer, profit and all other things necessary to perform all the services required by this Agreement in the manner and at the times prescribed. Contractor shall impose no other charges for services provided to Customers unless approved by the City Manager.

#### 6.2 Initial Rates

The maximum rates that Contractor may charge Customers from July 1, 2013 through June 30, 2014, shall not exceed the maximum rates set forth in Exhibit 2.

#### 6.3 Schedule of Future Adjustments

##### 6.3.1 Request Submittal

Beginning with the Rate Year starting July 1, 2014 and ending on June 30, 2015, and for all subsequent Rate Years, Contractor may request an annual adjustment to the maximum rates shown in Exhibit 2. The Contractor shall submit its request in writing, to be received by City in person or via certified mail, by the preceding March 1, and shall be based on the method of adjustment described in Section 6.4. Failure to submit a written request by March 1 shall result in Contractor waiving the right to request such an increase for the subsequent Rate Year.

##### 6.3.2 Approval Process

Annual adjustment to the maximum rates calculated in accordance with Section 6.4 is subject to the approval of the City Manager, with any other adjustments subject to approval of City Council. If a rate adjustment requested per this Section 6.3 is determined by the City to be accurately calculated in accordance with Agreement

procedures, and would otherwise have been approved by the City Council, but is prevented from implementation due to a protest under Proposition 218, then Contractor is permitted to terminate this Agreement upon 24-month written notice to City, but shall not be entitled to compensation from City or Customers for lost revenue due to the Proposition 218 protest.

## **6.4 Method of Adjustments**

### **6.4.1 General**

Pursuant to Section 6.3, Contractor may request an adjustment to the maximum rates according to the method described below, subject to review and approval of City. All future adjustments approved under Sections 6.3 and 6.4 are to be effective July 1. (Note that the following rate adjustment formulas shall apply to the rates net of AB 939 fee, as AB 939 fees are adjusted in accordance with Section 3.6.)

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

The approved Company Compensation consists of the following cost component categories. Each cost component may be adjusted by the change in the corresponding index below. See Section 6.4.3 for detailed Company Compensation adjustment procedures.



<u>Cost Category</u>	<u>Initial Weightings</u>		<u>Rate Adjustment Factor (1)</u>
	Bin/ Cart/ Can/COD	Roll-Off Box Pull Rate	
Labor	25%	41%	Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving
Fuel	5%	18%	Producer Price Index WPU 0531, Not seasonally adjusted, Fuels and related products and power, natural gas
Equipment	13%	13%	Producer Price Index, PCU336120336120, Heavy duty truck manufacturing
Processing/ Disposal	27%	n/a	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average or 5%, whichever is lower
All Other	30%	28%	Consumer Price Index for All Urban Consumers (CUUR0000SA0L1E), all items less food and energy index - U.S. city average
Total	100%	100%	

(1) If an index is discontinued, an alternative index must be approved by the City Manager.

### 6.4.3 Rate Adjustment Steps

#### Cart, Can, and Bin Rates

Bin, Can, and Cart rates will be adjusted using the cost component weightings identified above for Bin, Can, and Cart rates as described below. See Exhibit 3A.

Step One - Calculate the percentage increase or decrease in each index listed in Section 6.4.2. The increase or decrease in the published indices for labor, fuel, equipment, disposal and all other (CPI) will be the change in the average annual published index between the 12-months ended the September prior to the Rate Year anniversary date and prior 12-month average (See Exhibit 3C).

Step Two - The first rate adjustment cost components as a percentage of total costs are provided in Section 6.4.2 above, with subsequent components calculated in Step Four of the rate adjustment. For Step Two of each subsequent rate adjustment, use the cost components recalculated in Step Four during the previous rate adjustment.

Multiply the percentage changes for each rate adjustment component by that component's weighting and add these resulting percentages together to get the total weighted change to the rates. If this percentage change exceeds 5%, the change shall be capped at 5%.

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

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

#### "Pull Plus Dump" Roll-Off Box Rates

Roll-Off Box pull rates (excluding disposal-inclusive COD rates) will be adjusted using the same methodology above, with the weightings identified above for Roll-Off Pulls. The 5% cap on annual increases as described in Step 2 applies as well. The per ton Roll-Off Box Refuse Disposal rate shall adjust based upon the change in the disposal component of the rates (per the rate adjustment factor in Section 6.4.2). See Exhibit 3B.

#### **6.4.4 Green Waste Rate Adjustment Upon Closure of Puente Hills**

The Residential Green Waste Cart rates for services provided under Section 4.3.1 shall increase by \$0.30 per Cart per month upon the closure of Puente Hills Landfill, provided Contractor then transports material Collected on the Green Waste Cart route to Company's American Organics facility in Victorville for composting. At this point, Food Waste will be permitted to be added to the Green Waste Carts for composting at no additional cost. This increase is the only compensation adjustment granted for the landfill closure and/or use of an alternative Green Waste facility.

### **6.5 Extraordinary Adjustments**

Contractor may request an adjustment to maximum rates in the event of extraordinary changes in the cost of providing service under this Agreement. Extraordinary rate adjustments may be requested no more than once per year. Reasons for such extraordinary rate adjustment requests shall not include changes in Recyclable Material or Green Waste tipping fees or processing costs, changes in transformation costs, changes in the market value of Recyclables from the values assumed in Contractor's

Proposal, inaccurate estimates by the Contractor of its proposed cost of operations, unionization of Contractor's work force, or change in wage rates or employee benefits.

Contractor may request an extraordinary adjustment based upon changes in a direct per ton fee assessed at the Disposal Site by federal, state or local regulatory agencies after the Effective Date. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively. Should any such adjustment require a Proposition 218 hearing, Contractor shall bear all costs.

For each request for an adjustment to the maximum rates that Contractor may charge Customers brought pursuant to this section, Contractor shall prepare a schedule documenting the extraordinary costs. Such request shall be prepared in a form acceptable to City with support for assumptions made by Contractor in preparing the estimate. Contractor shall also submit a schedule showing how its total costs and total revenues have changed over the past three (3) years for the services provided under this Agreement.

City may request a copy of the Contractor's annual financial statements in connection with the City's review of Contractor's rate adjustment request. City 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. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

## **6.6 Redelivery/Return Trip Fee**

Contractor may charge a fee, per the approved rate schedule, in the event that Contractor arrives on time for a scheduled Collection of Bins or Roll-off Boxes, is impeded from Collection due to Container being blocked or otherwise unable to be Collected due to issues within the Customer's control, and Contractor must return a second time for Collection. Charge may be assessed for the trip, not per Bin or Roll-off Box, in the event of a Customer with multiple Bins or Roll-off Boxes. In event of dispute between Contractor and Customer over application of this fee, City Manager shall resolve the dispute.

## **6.7 Customer Billing and Contractor Compensation**

### **6.7.1 Residential Customers Receiving Individual-Unit Service**

Contractor shall Bill individually-serviced Residential Customers quarterly, no sooner than the first day of the quarter for which services are being Billed. Contractor assumes the risk of non-payment.

### **6.7.2 Permanent Bin and Roll-Off Box Customers**

Contractor shall Bill permanent Bin and Roll-Off Box Customers monthly, no sooner than the first day of the month for which service is being Billed, with payment due no sooner than thirty (30) days after the invoice date. Contractor assumes the risk of non-payment by Bin Customers.

### **6.7.3 Temporary Services Billing**

Contractor shall Bill for temporary Roll-off Box and Bin services, and other special charges, as permitted in Exhibit 2. For established Commercial accounts, Contractor shall Bill monthly, no sooner than the first day of service, and require payment no sooner than thirty (30) days from the start of the service period Billed for.

For Customers without an established, on-going service accounts, Contractor will accept major credit cards for payment. Such Customers who do not use credit cards may be required by the Contractor to post a security deposit or to pay on a "Cash on Delivery" (C.O.D.) basis. Any unused portion of a security deposit will be refunded to the Customer within five (5) business days of the termination of service.

### **6.7.4 Contractor's Invoices**

All Bills must include service description, including Container size, frequency of service, any special services (such as scout or push-out service), and period billed for. City must approve Contractor Billings as to content and format of invoice. All Bills must carry a due date, not "due upon receipt." Bills will not separately itemize City fees, surcharges, disposal components or other breakdown of rates without advance written approval from City. Bills shall include Contractor's telephone number for Billing and service inquiries.

### **6.7.5 Billing Disputes**

If any Customer disputes a Billing statement provided by Contractor, Contractor shall provide notice thereof to the City Manager, with a copy of the Billing invoice and the nature of the dispute (including copies of any correspondence from the Customer). Contractor shall use its best efforts to resolve such disputes within seven (7) days of receipt of notice from the Customer of such dispute. If such dispute cannot be mutually resolved by the Contractor and the Customer within such seven (7) day period, the dispute will be submitted to the City Manager for binding dispute resolution. Contractor acknowledges that the determination of the City Manager relating to such dispute shall be final and un-appealable.

### **6.7.6 Delinquent Accounts**

Contractor shall be responsible for collecting unpaid Customer Billings, subject to limitations under this section. City will assist the Contractor with collections by putting delinquencies on the County property tax roll after the delinquency notes have been delivered, but is not liable for any bad debt.

#### Residential Cart/Can Service

For late payments, Contractor shall follow procedures below:

1. The first delinquency notice may be sent with the subsequent quarterly Billing, with a copy sent to the City Manager. A 10% late payment fee may be added to the outstanding, late balance.
2. The second delinquency notice may be sent no sooner than thirty (30) days following the first notice, with a copy sent to the City Manager. A second 10% late payment fee may be added to the outstanding, late balance.

#### Bin, Commercial Cart/Can and Roll-Off Box Service

1. The first delinquency notice may be sent with the subsequent monthly Billing, with a copy to the City Manager. A 10% late payment fee may be added to the outstanding, late balance.

2. The second delinquency notice may be sent thirty (30) days after the first, warning that service may be suspended, with a copy to the City Manager. A second 10% late payment fee may be added to the outstanding, late balance.
3. Anytime following the second delinquency notice, Contractor shall send a notice warning that service will be suspended within seven (7) days, with copy to City Manager. Contractor may suspend service after seven (7) days with written City approval.

City may prohibit suspension of service to Residential Cart/Can Customers, and may request that service be continued or resumed for delinquent Residential Bin Customers on a case-by-case basis due to code enforcement issues; in such cases, City shall not be liable to Contractor for service costs not recovered by Contractor.

#### **6.7.7 Customer Billing Adjustments**

Should Contractor determine that Contractor has under-billed a Customer, or Customers, Contractor may back-Bill for no more than six (6) months. If it is determined by the City Manager that the under-billing was entirely due to an error or omission on the part of the impacted Customer, Contractor may request authority from the City Manager to back-bill longer than six months. Reimbursements to Customers for overbilling are not limited.

If Contractor Bills Customers for any service charges not on the City-approved rate schedule, or not otherwise approved in writing by the City, such charges shall be refunded to Customers at City request.

#### **6.7.8 Exemption from Service**

Residents may request a temporary exemption from service due to non-occupancy, construction, documentation of self-hauled Disposal, or other reasons as set forth in the Hermosa Beach Municipal Code. Contractor shall be responsible for administering exemption procedures, pursuant to the requirements in the Hermosa Beach Municipal Code. City may provide or revise Contractor guidelines to exempt properties from receiving, and paying Contractor for, Solid Waste Collection service. Exempt properties may include vacant or unoccupied properties, or properties in which owners can document alternative means of self-haul Disposal.

### **6.7.9 Active Military Rate Reductions**

Contractor shall provide a 25% rate reduction to monthly Residential Cart rates for active members of the military. As active military may be stationed away from home for periods of time, this rate reduction would apply to the property so long as the military member maintains the property as his or her permanent residence. The City Manager shall make the final determination as to permanent residence status based on evidence provided by person requesting discount

### **6.7.10 Senior Low-Income Rate Reduction**

Contractor shall provide a 10% rate reduction to seniors sixty-two years of age or older that meet the criteria for low-income rate reductions offered by local utility companies, including California Alternative Rates for Energy, or CARE, and meet the following criteria. Qualifying Customer shall subscribe to Cart Collection service with Refuse Cart sizes of 35- to 96-gallons. (The 20-gallon Refuse Cart service rate is considered a reduced rate without further reduction.) Qualifying Customer shall be the head of the household with the Solid Waste Collection account in his/her name and shall reside in the applicable home. The discount is not applicable to Landlords or Bin Customers. Contractor shall be solely responsible for administering this rate reduction program. If Parties dispute the applicability of the rate reduction, the City Manager may, but is not obligated to, make a final determination as to applicability.

## ARTICLE 7

### REVIEW OF SERVICES AND PERFORMANCE

#### 7.1 Performance Review Meeting

City may hold a meeting or a public hearing annually to review Contractor's Solid Waste Collection efforts, source reduction, processing and other Diversion services and overall performance under this Agreement (the "Solid Waste Services and Performance Review Meeting"). The purpose of the Solid Waste Services and Performance Review Meeting is to provide for a discussion and review of technological, economic, and regulatory changes in Collection, source reduction, Recycling, processing and Disposal to achieve a continuing, advanced Solid Waste Collection, source reduction and Recycling and Disposal system; and to ensure services are being provided by Contractor with adequate quality, effectiveness and economy, and in full compliance with the terms of this Agreement. Topics for discussion and review at the Solid Waste Services and Performance Review Meeting shall include, but shall not be limited to, services provided, feasibility of providing new services, application of new technologies, Customer complaints, amendments to this Agreement, developments in the law, new initiatives for meeting or exceeding AB 939's goals, regulatory constraints, results of route audits, and Contractor performance. City and Contractor may each select additional topics for discussion at any Solid Waste Services and Performance Review Meeting.

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

- a) Current Diversion rates and a report on Contractor's outreach activities for the past year.
- b) Recommended changes and/or new services to improve City's ability to meet waste diversion goals and to contain costs and minimize impacts on rates. A specific plan for compliance with State diversion goals shall be included.
- c) Any specific plans for provision of new or changed services by Contractor.



The reports required by this Agreement regarding Customer complaints shall be used as one basis for review of Contractor's performance, and Contractor may submit other relevant performance information and reports for consideration at the Solid Waste Services and Performance Review Meeting. In addition to the above, City may request Contractor to submit any other specific information relating to its performance for consideration at the Solid Waste Services and Performance Review Meeting, and any Customer may submit comments or complaints during or before the Meeting, either orally or in writing. Contractor shall be present at and participate in the Solid Waste Services and Performance Review Meeting.

As a result of its findings following any Solid Waste Services and Performance Review Meeting, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Solid Waste Services and Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 2.10.

## **7.2 Performance Satisfaction Survey**

If requested by the City, Contractor will create and conduct a survey at Contractor's expense in preparation for any Solid Waste Services and Performance Review Meeting held pursuant to Section 7.1. City shall notify Contractor of its desire for such a survey at least ninety (90) days in advance of the Solid Waste Services and Performance Review Meeting. The purpose of the survey is to determine Customer satisfaction with current Collection services and Customer service provided by Contractor. The Survey will be distributed to a minimum of five percent (5%) of the Residential Customers and ten percent (10%) of the Commercial Customers, selected at random. City may instruct Contractor to send out separate Single Family and Multi-Family/Commercial surveys. Contractor shall obtain City's approval of each survey's content, format, and mailing list prior to its distribution. City may require that Contractor have Customer responses to the survey returned directly to City. The survey results shall be made available to the City thirty (30) days prior to the Solid Waste Services and Performance Review Meeting.

### 7.3 Route Audit

Once during the first year, and thereafter at City request (but not more frequently than once per year), Contractor shall conduct an audit of its Residential and/or Commercial Collection routes in the City. City may use information from the audit to develop a request for proposals for a new service provider. City may instruct Contractor when to conduct the audit in order for the results to be available for use in preparation of a request for proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that would produce the most accurate Customer service information for a new service provider to use in establishing service with Customers. In setting these audit dates, City will establish due dates for Contractor providing routing and account information, and later, the report, to City.

The route audit, at minimum, shall consist of an independent physical observation by person(s) other than the route driver of each Customer in City. This person(s) is to be approved in advance by City. The route audit information shall include, as a minimum, the following information for each account:

For Residential Cart Customers (Residential Route Audit):

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

For Residential Bin, Commercial Bin and Cart, and permanent Roll-off Customers (Commercial Route Audit):

- Route number;
- Truck number;
- Account name;
- Account number;
- Account service address;
- Account type (Residential, Commercial, Roll-off);

- Service level per Contractor Billing system (quantity, size, frequency);
- Observed Containers (quantity and size).
- Container condition;
- Proper signage; and,
- Graffiti.

Within thirty (30) days after the completion of the route audit, Contractor shall submit to City a report summarizing the results of the audit. This summary shall include:

- Identification of the routes;
- Route map;
- Truck numbers;
- Number of accounts, by route and in total (Residential, Commercial and Roll-off Box);
- Confirmation that all routes are dedicated exclusively to City Customers, or that the tonnage allocation methodology has been approved by the City;
- Number and type of exceptions observed;
- Total monthly service charge (Residential, Commercial and Roll-off Box), pre-audit; and,
- Total monthly service charge (Residential, Commercial and Roll-off Box), post-audit (subsequent to corrections of identified exceptions).

The report shall include a description of the procedures followed to complete the route audit. This description shall include the names and titles of those supervising the route audits and the names and titles of those performing the observations.

The report shall also include a description of the changes and Contractor's plans to resolve the exceptions. The results of the audit, and supporting back-up data, shall be available for review by City or its representative and shall be made available in an electronic or printed format.

## **ARTICLE 8**

### **RECORDS, REPORTS AND INFORMATION REQUIREMENTS**

#### **8.1 General**

Contractor shall maintain such accounting, statistical and other records related to its performance under this Agreement as shall be necessary to develop the financial statements and other reports required by this Agreement. Also, Contractor agrees to conduct data collection, information and record keeping, and reporting activities needed to comply with applicable laws and regulations, to meet the reporting and Solid Waste program management needs of City, and to evaluate progress on meeting the City's sustainability and environmental objectives. To this extent, such requirements set out in this and other articles of this Agreement shall not be considered limiting or necessarily complete. In particular, this article is intended to only highlight the general nature of records and reports and is not meant to define exactly what the records and reports are to be and their content. Further, with the written direction or approval of City, the records and reports to be maintained and provided by Contractor in accordance with this and other Articles of the Agreement shall be adjusted in number, format, or frequency.

#### **8.2 Records**

##### **8.2.1 General**

Contractor shall maintain records required to conduct its operations, to support requests it may make to City, and to respond to requests from City in the conduct of City business. Adequate record security shall be maintained to preserve records from events that can be reasonably anticipated such as a fire, theft and earthquake. Electronically maintained data/records shall be protected and backed up to the satisfaction of the City. All records shall be maintained for five (5) years, and shall continue to be available for five (5) years after the expiration of this Agreement, except as otherwise provided in this Agreement. After minimum holding periods are met, Contractor will notify City ninety (90) days before destroying records.

Contractor agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its official

representatives during normal business hours. Account histories shall be accessible to the City by computer for a minimum of five (5) years. City may review or utilize any of the records described in this section. Such records include, but are not limited to, financial, Solid Waste, CERCLA and Disposal records.

### **8.2.2 Financial Records**

Contractor shall maintain financial records relating to its operations pursuant to this Agreement separate and segregated from such records relating to its other operations.

Contractor shall maintain at least the following records:

- Audited financial statements for Contractor or, if a guarantee was provided, for the parent company guarantor as a whole;
- Financial statements (compiled, reviewed or audited) of revenue and expense for this Agreement segregated from the other operations of Contractor (including without limitation those operations of Contractor in City and surrounding jurisdictions which are not covered by this Agreement), including a description of segregation methodology; and,
- Complete descriptions of related party transactions (corporate and/or regional management fees, intercompany profits from transfer, processing or Disposal operations).

### **8.2.3 Solid Waste Records**

Contractor shall maintain and make available to the City upon request the following records relating to its operations pursuant to this Agreement:

- a) Customer services and Billing/City payment records;
- b) Records of tons Collected, processed, diverted and Disposed by waste stream (Refuse, Recycling and Green Waste), by Customer type (Cart/Can, Residential Bin, Commercial and Roll-off Box), and the Facilities (Transfer Station, MRF, or landfill) where such material was taken (Residential Bin versus Commercial Bin tonnage may be estimated based upon Container distribution or other method approved by City);

- c) Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with AB 939;
- d) Bulky Item and special event tonnages, including tons disposed and diverted;
- e) Routes;
- f) Facilities, equipment and personnel used;
- g) Facilities and equipment operations, maintenance and repair;
- h) Number and type of Refuse, Recycling and Green Waste Containers in service by container type (Cart, Can, Bin, Roll-Off Box) and size;
- i) Complaints; and,
- j) Missed pickups.

#### **8.2.4 CERCLA Defense and Disposal Records**

The City views the ability to defend against CERCLA, State Hazardous Substance Law, and related litigation as a matter of great importance. For this reason, the City regards the ability to prove where Solid Waste Collected in the City was taken for Disposal, as well as where it was not taken, to be matters of concern. The Contractor shall maintain data retention and preservation systems that can establish where Solid Waste Collected in the City was landfilled (and therefore establish where it was not landfilled) and provide a copy of disposal reports for twenty-five (25) years and the other reports required in Section 8.2.3 for five (5) years after the term during which Collection services are to be provided pursuant to this Agreement, or to provide copies of such records to the City. Contractor shall continue to retain records in accordance with Section 8.2.3 for five (5) years, and disposal records for twenty-five (25) years, after the term during which Collection services are to be provided pursuant to this Agreement. Contractor agrees to notify the City's Risk Manager and the City Attorney at least ninety (90) days before destroying such records. This provision shall survive the expiration of the period during which Collection services are to be provided under this Agreement.

### **8.2.5 Other Programs' Records**

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

- a) Plans, tasks, and milestones; and,
- b) Accomplishments in terms such as dates, activities conducted and numbers of participants and responses; and,
- c) Records relating to programs or other activities undertaken by Contractor pursuant to the Agreement that may help City to complete reporting related to the City's sustainability and environmental objectives.

### **8.2.6 Audit**

City may conduct an audit of Contractor at any time. The scope of the audit and auditing party will be determined by City, and the scope may include, but is not limited to, compliance with terms of this Agreement, Customer service levels and Billing, fee payments, Gross Receipts, tonnage and verification of Diversion rate.

Contractor will fund biennial audits. The first hauler-funded audit, to be performed following the 2014 fiscal year, will be based on the Contractor's reports and records for fiscal year 2013/14. Contractor-funded audits will be performed every other year thereafter. Contractor will reimburse to the City the cost of such audits up to \$80,000 for the first audit, and up to \$50,000 for each subsequent biennial audit in 2014 dollars. The \$50,000 amount in subsequent years shall be increased annually by the change in CPI identified in Section 6.4 as the change to the "all other" component.

Should an audit conducted or authorized by the City disclose that fees payable by Contractor were underpaid by three percent (3%) or more, that tonnage was misreported by three percent (3%) or more, or that more than three percent (3%) of the Customers were inaccurately Billed based on the auditor's sampling for the period under review, City may expand the scope of the audit and recover additional audit costs from the Contractor.

### **8.2.7 Payments and Refunds**

Should an audit disclose that fees payable by the Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of fees and/or refund to Contractor's Customers or to City, as directed by City, any overcharges within thirty (30) days following the date of the audit; reimbursement to City or Customers for underpayments and overcharges may be limited to three (3) years. Contractor credit for overpayment of City fees shall be limited to three (3) years. Contractor shall pay interest to the City for any underpayment or overcharges at an annual rate of twelve percent (12%). Undercharges shall not be billed in arrears for more than six (6) months of service, with any remaining undercharges absorbed by Contractor. Should an audit disclose that fees were overpaid, City may credit such amounts against future fees payable by Contractor or may select another method of reimbursement.

## **8.3 Reports**

### **8.3.1 Report Formats and Schedule**

Records shall be maintained in forms and by methods that facilitate flexible use of data contained in them to structure reports, as needed. Contractor may propose report formats that are responsive to the objectives and audiences for each report. The format of each report shall be approved by City. In addition to submitting all reports on paper, Contractor agrees to submit all reports in an electronic format approved by City, compatible with City's software/computers at no additional charge.

Reports shall be submitted within thirty (30) calendar days after the end of the reporting period. Annual reports for which a date is not otherwise specified in this Agreement shall be submitted within thirty (30) calendar days after the end of the fiscal year. If requested, Contractor's complaint summary, described in Section 5.1.2, shall be sent to the City Manager within five (5) business days of request.

All reports shall be submitted to:

City Manager  
City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach, California 90254



### **8.3.2 Monthly Reports**

The information listed below shall be the minimum reported:

- a) Solid Waste Collected by Contractor, sorted by type of Solid Waste Collected and diverted (Refuse, Recycling and Green Waste) in tons (including contamination and Diversion rates for each waste stream and Customer type), Customer type (Cart/Can, Bin and Roll-off Box) and the Facilities where the tons were processed or Disposed.
- b) Warning notices issued for contaminated Refuse, Recyclable Materials and Green Waste Containers.
- c) Narrative summary of problems encountered and actions taken with recommendations for City, as appropriate.
- d) Description of Contractor outreach activities and copies of promotional and public education materials sent during the month.
- e) Other information or reports that City may reasonably request or require.

Note: Monthly fee payment statement supporting calculation of monthly fees due per Article 3 shall be submitted separately, accompanying the fee payment.

### **8.3.3 Annual Report**

The annual report shall include:

- a) A summary of the number of Containers in service as of December 31 by size (number of gallons, number of yards), sector (Residential Cart, Residential Can, Commercial Cart, Commercial Can, Residential Bin, Commercial Bin and Roll-off Box), service frequency, and type of service (Refuse, Recycling and Green Waste). Identify which Containers represent free City services.
- b) Records of tons Collected, processed, diverted and disposed by waste stream (Refuse, Recycling and Green Waste), by Customer type (Cart/Can, Bin and Roll-off Box).
- c) Number of routes and route hours per day by type of service as of June 30.
- d) General information about the Contractor and its most recent annual report.
- e) Other information or reports that City may reasonably request or require.

- f) Gross annual Billings by service sector (Cart/Can, Bin and Roll-off Box).

#### **8.3.4 Financial Report**

The City may, at City's option, request and be provided with Contractor's financial reports/statements for the most recently completed fiscal year in connection with any audit, extraordinary rate adjustment request, or verification of other information required under this Agreement.

The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles ("GAAP") and audited, in accordance with Generally Accepted Auditing Standards ("GAAS"), by a certified public accountant ("CPA") licensed (in good standing) to practice public accounting in the State of California as determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost of preparation of the financial statements and audit shall be borne by Contractor as a direct cost of service.

In addition to the above audited financial statements, Contractor shall provide to City the supplemental schedule of results of operations in the City on a compiled basis. The supplemental schedule will show Contractor's specific revenues and expenses in connection with the operations provided for in this Agreement, separated from operations in other geographical areas. The supplemental schedule need not be audited and may be internally prepared; however, the total results of Contractor's operations per the supplemental schedule must agree to the audited financial statements.

#### **8.4 Reporting Adverse Information**

Contractor shall provide City two (2) copies (one to the City Manager, one to the City Attorney) of all reports, pleadings, applications, notifications, notices of violation, communications or other material relating in any way to Contractor's performance of services pursuant to this Agreement, submitted by Contractor to, or received by Contractor from, the United States or California Environmental Protection Agency, CalRecycle, the Securities and Exchange Commission or any other federal, state or local agency, including any federal or state court. Copies shall be submitted to City within thirty (30) days of receipt by Contractor, or sooner if reasonably apparent that to do so is materially relevant; any responses by Contractor shall be submitted to City simultaneously with Contractor's filing or submission of such matters with said agencies. Contractor's routine correspondence to said agencies need not be routinely

submitted to City, but shall be made available to City promptly upon City's written request.

#### **8.5 Right to Inspect Records**

City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its Affiliates that City shall deem, in its sole discretion, necessary to evaluate annual reports, and Contractor's performance provided for in this Agreement. Contractor shall make all records and documents to be reviewed and inspected by City as a part of any audit or other record review conducted by City, available for City's review, inspection and copying within five (5) days of receiving written notice from City requesting the same.

#### **8.6 Failure to Report**

The refusal or failure of Contractor to file any required reports, or to provide required information to City, or the inclusion of any materially false or misleading statement or representation by Contractor in such report shall be deemed a material breach of the Agreement as described in Section 11.1 and shall subject Contractor to all remedies which are available to the City under Agreement or otherwise.

## ARTICLE 9

### INDEMNIFICATION, INSURANCE AND BOND

#### 9.1 Defense of Agreement

Contractor agrees to, and shall timely, take all actions that are reasonably necessary to defend the validity and enforceability of this Agreement and shall pay all costs related to such defense. Contractor shall defend, indemnify, protect and hold harmless, the City, its officers, agents and employees from any and all claims, actions or proceedings to attack, set aside, void, annul or seek monetary damages resulting from an approval by the City of this Agreement. The City shall promptly notify Contractor of any such claim, action, or proceeding. The City and Contractor shall meet in good faith in an effort to come to a mutual agreement for a joint defense; provided that the City shall be entitled to select legal counsel of its choice to conduct the defense if an agreement cannot be reached. Contractor's obligations to pay all costs, defend, indemnify, protect and hold harmless under this section shall not be altered in the event City retains separate counsel and shall also include reimbursement to City for time spent by its in-house City attorneys responding to the litigation.

#### 9.2 Indemnification

Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, consultants and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement

for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but shall not extend to matters resulting from the Indemnitees' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the Indemnitees in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, or asserting rights under the United States or California Constitutions or any federal or state law to provide Solid Waste Handling Services in the City.

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

### **9.3 Hazardous Substances Indemnification**

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

losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of, or are alleged to arise out of, or in any way relate to any action, inaction or omission of Contractor that:

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

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

1. any Claims brought pursuant to or based on the provisions of any Environmental Law;
2. any Claims based on, or arising out of, or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any Facility;
3. any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, Disposal, processing or use of any materials recovered by Contractor;
4. any Claims based on or arising out of, or alleged to be arising out of, any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

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

**D.** For purposes of this section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste, any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all

amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.

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

#### **9.4 AB 939 Indemnification and Guarantee**

A. Contractor agrees to indemnify and hold harmless City from and against all fines and/or penalties imposed by CalRecycle in the event the source reduction and Recycling goals or any other requirement of AB 939 are not met by City with respect to the waste stream Collected under this Agreement.

B. Contractor warrants and represents that it is familiar with City's waste characterization study as set forth in City's Source Recovery and Recycling Element ("SRRE"), and that it has the ability to and will provide sufficient programs and services to ensure City will meet or exceed the Diversion requirements (including, without limitation, amounts of Solid Waste to be diverted, time frames for Diversion, and any other requirements) set forth in AB 939, with respect to that portion of the Solid Waste generated in City that is the subject of this Agreement.

#### **9.5 Insurance**

Contractor shall procure and maintain during the entire Term of this Agreement the following types of insurance, and shall maintain the following minimum levels of coverage, which shall apply to any claims which may arise from or in connection with Contractor's performance hereunder or the actions or inactions of any of Contractor's officers, agents, representatives, employees, or subcontractors in connection with Contractor's performance. The insurance requirements hereunder in no way limit Contractor's various defense and indemnification obligations, or any other obligations as set forth herein.

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

1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 00 01).

2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.
4. Pollution and/or Environmental Impairment Liability Insurance

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

1. Comprehensive General Liability: Five Million Dollars (\$5,000,000) limit aggregate and Five Million Dollars (\$5,000,000) limit per occurrence for bodily injury, Personal injury and property damage.
2. Automobile Liability: Five Million Dollars (\$5,000,000) limit aggregate and Five Million Dollars (\$5,000,000) single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident, One Million Dollars (\$1,000,000) policy limit for bodily injury or disease; One Million Dollars (\$1,000,000) per each employee bodily injury or disease.
4. Pollution and/or Environmental Impairment Liability: Three Million Dollars (\$3,000,000) each occurrence/Ten Million Dollars (\$10,000,000) policy aggregate covering liability arising from the release of waste materials and/or irritants, contaminants or pollutants. Contractor shall ensure that such coverage shall, if commercially available, without involvement of City, automatically broaden in its form of coverage to include legislated changes in the definition of waste materials and/or irritants, contaminants or pollutants. The policy shall stipulate this insurance is primary and no other insurance carried by City will be called upon to contribute to a loss suffered by Contractor hereunder and waive subrogation against City and other additional insureds.



**C. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention's as respects City, its officials, employees and agents; or Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

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

1. General Liability and Automobile Liability Coverages
  - a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; or vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.
  - b) Contractor's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
  - c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.
  - d) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- e) The commercial general and automobile liability policies required by this Agreement shall allow City, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the Contractor (as the named insured) should Contractor fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. Contractor understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by Contractor as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on Contractor's behalf upon the Contractor's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against Contractor for breach of this Agreement in addition to any other damages incurred by City due to the breach.
- 2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Contractor for City.
- 3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

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

**F. Verification of Coverage.** Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. Such certificates shall show the type and amount of coverage, effective dates and dates

of expiration of policies, and shall have all required endorsements. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies at any time.

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

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

**H. Required Endorsements**

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

"Thirty (30) days (or ten (10) days in the event of cancellation for non-payment) prior written notice by certified mail, return receipt requested, shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager  
City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach, California 90254

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

- a) "Thirty (30) days (or ten (10) days in the event of cancellation for non-payment) prior written notice shall be given to City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager  
City of Hermosa Beach

1315 Valley Drive  
Hermosa Beach, California 90254

- b) "Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds City of Hermosa Beach, its officials, employees and agents, using standard ISO endorsement No. CB 2010 with an edition date of 1985, or equivalent provisions as determined acceptable by the Office of the City Attorney for the City of Hermosa Beach in its sole discretion. Contractor also agrees to require all contractors, subcontractors and anyone else involved in any way with the project contemplated by this agreement, to do likewise."
- c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."
- d) "Inclusion of City as an insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured."
- e) "The City, as additional insured, shall be permitted to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the Contractor (as the named insured) should Contractor fail to pay the SIR or deductible requirements. "

## **I. Other Insurance Requirements**

- 1. In the event any services are delegated to another company or subcontractor, Contractor shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the company's or subcontractor's employees

engaged in the work in accordance with this Section 9.5. The liability insurance required by this Section 9.4 shall cover all companies or subcontractors or the companies or subcontractors must furnish evidence of insurance provided by it meeting all of the requirements of this Section 9.5.

2. Contractor shall comply with all requirements of the insurers issuing policies. The carrying of insurance shall not relieve Contractor of any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third Person against Contractor or any company or subcontractor on account of any occurrence related to this Agreement, Contractor shall promptly report the facts in writing to the insurance carrier and to City.

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

## **9.6 Faithful Performance Bond**

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of Five Hundred Thousand Dollars (\$500,000), similar to the form provided in Exhibit 6, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney.

## **9.7 Forfeiture of Performance Bond**

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

## **9.8 Performance Security Beyond Service Term**

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 4.2.5, will not be substantiated until after the final service date. Therefore, Contractor shall not terminate the Performance Bond, and will renew them to ensure continuous availability to the City, until receiving a written release from the City. The Performance Bond will automatically expire at the end of twenty-four (24) months after the end of the Term, unless City has notified Contractor in writing as to a specific contractual area of concern yet to be resolved, instructing Contractor to retain all or a portion of the Performance Bond. Neither permission from the City to discontinue holding the Performance Bond, nor permitted expiration after twenty-four (24) months, shall relieve Contractor of payments to the City that may be due, or may become due.

## **ARTICLE 10**

### **CITY'S RIGHT TO CONTRACT WITH THIRD PARTIES TO PERFORM FRANCHISED SERVICES**

City may contract with another Solid Waste enterprise to Collect and transport Solid Waste in the event Contractor for any reason (except as provided below regarding Force Majeure) refuses or is unable to Collect Solid Waste for a period of more than forty-eight (48) hours. City must provide twenty-four (24) hours prior written notice to Contractor during such time before contracting with another solid waste enterprise. In such event Contractor must identify sources from which such substitute solid waste services are immediately available and reimburse City for all of its expenses for such substitute services during period in which Contractor does not provide Collection and transportation services required by this Agreement.

## ARTICLE 11

### DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

#### 11.1 Events of Default

All provisions of this Agreement to be performed by Contractor are considered material. Each of the following (by way of example and not as an exhaustive list) shall constitute an event of default by the Contractor.

- A. Fraud or Deceit or Misrepresentation.** If the Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.
- B. Insolvency or Bankruptcy.** If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.
- C. Failure to Maintain Insurance Coverage and Valid Permits and Licenses.** If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage, as well as valid permits and licenses as required by this Agreement.
- D. Violations of Regulation.** If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.
- E. Failure to Pay.** If Contractor fails to make any payments required under this Agreement and/or refuses to provide City, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.
- F. Failure to Cooperate with Audits.** Failure to complete, perform or cooperate with any audit as described by this Agreement.



**G. Failure to Submit Reports or Documentation.** Failure to complete or to provide required reports or documents to City as required by this Agreement.

**H. Acts or Omissions.**

A. Any act or omission by Contractor relative to the services provided under this Agreement which violates the terms, conditions, or requirements of this Agreement, or AB 939, or any law, statute, ordinance, order, directive, rule, or regulation issued pursuant to AB 939 shall constitute a default by Contractor. Any failure to correct or remedy any such violation within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach within the time set forth in such notice, if Contractor should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter, shall constitute a default by Contractor.

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

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

**J. Attachment.** The seizure of, attachment of, or levy on, the operating equipment of Contractor, including, without limits, its equipment, maintenance or office facilities, or any part thereof.

**K. Suspension or Termination of Service.** If Contractor ceases to provide all or a portion of the Collection, processing or Recycling services, or any other Solid Waste Handling Services as required under this Agreement (including, without limitation,

failure to provide service due to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action, unless all requirements of Section 11.4 are met) for two (2) or more consecutive days.

**L. Failure to Provide Assurance of Performance.** If Contractor fails to provide reasonable assurances of performance as required under Section 11.6.

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

**N. Failure to Meet Section 4.2.5 Diversion Goal.** Failure to meet the minimum recycling requirements identified in Section 4.2.5 for two (2) consecutive calendar years.

Contractor shall have five (5) business days from the time it is given notification by City to cure any default arising under subsections E, F, G, J, K, L and M provided, however, that City shall not be obligated to provide Contractor with a notice and cure opportunity if Contractor has committed the same or similar breach within a twenty-four (24) month period. It is expressly understood that Contractor is not entitled to receive notice of default, or to cure such default, with respect to those matters listed in subsections A, B, C, D, H, I, and N above.

## **11.2 Right to Terminate Upon Default and Right to Specific Performance**

If Contractor commits a material breach included in Section 11.1 above (and, if permitted to cure, does not cure it within the five days), City shall be entitled to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other conditions it deems appropriate short of termination) as it shall deem proper. Should City decide to terminate this Agreement upon a default by Contractor, City shall have the right to do so upon giving ten (10) days' notice to Contractor, and shall not be required to take any further action (such as holding any hearing, bringing any suit or taking any other action.)

City may seek to revoke or suspend this Agreement for violation of any other provisions of this Agreement in accordance with the Hermosa Beach Municipal Code Section 8.12.090-130.

City's rights to terminate this Agreement and contract with third parties to perform services are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which City may have.

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

### **11.3 Liquidated Damages**

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

**B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The Parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to City and that City has considered and

relied on Contractor's representations as to its quality of service commitment in entering this Agreement with it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails to achieve the performance standards, or fails to submit required documents in a timely manner, City and its residents will suffer damages and that it is and will be impractical and extremely difficult to ascertain and determine the exact amount of damages which City will suffer. Therefore, without prejudice to City's right to treat such breaches as an event of default under this Article 11, the Parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages for such specific breaches, considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to City that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements made above and the fact that each party has had ample opportunity to consult with legal counsel and obtain an explanation of the liquidated damage provisions at the time that the Agreement was made.

Contractor Initial Here _____	City Initial Here _____
----------------------------------	----------------------------

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

1. Collection Reliability
  - a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceeds five (5) such failures per calendar year: \$50.00
  - b) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not make up the Collection within the time allotted per Section 4.6.1.3: \$50.00

- c) For each failure to Collect Solid Waste, which has been properly set out for Collection, from the same Customer on two (2) consecutive scheduled pickup days: \$50.00

2. Collection Quality

- a) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences per calendar year: \$25.00
- b) For each occurrence in violation of the City's noise ordinance which exceeds ten (10) per calendar year: \$150.00
- c) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences per calendar year: \$150.00
- d) For each failure to clean up Solid Waste spilled from Solid Waste Containers within ninety (90) minutes which exceeds ten (10) such failures per calendar year: \$150.00

3. Customer Responsiveness

- a) For each failure to initially respond to a Customer complaint within one (1) business day in accordance with Section 5.1.2, and for each additional day in which the complaint is not addressed, which exceeds five (5) per calendar year: \$100.00
- b) For each failure to process Customer complaints as required by Article 5, Section 5.1.2, which exceeds five (5) per calendar year: \$100.00
- c) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within twenty-four (24) hours (except Sundays and holidays) of request from City or Customer, which exceeds five (5) per calendar year: \$ 50.00 per day
- d) For each failure to repair or replace a damaged or missing Container within three (3) business days of request from City or Customer, which exceeds five (5) per calendar year: \$ 50.00 per day

- e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor: \$100.00
- f) For each additional thirty (30) day increment of time in which Contractor has failed to resolve a claim for damages within thirty (30) days from the claim date: \$100.00
- g) For each failure to respond on-site to an emergency within one hour of notification by City: \$100.00

4. Diversion Efforts

- a) For each calendar year in which Contractor fails to provide support to the City within thirty (30) days of year-end, documenting that it diverted at least the minimum tonnage required by Section 4.2.5 under this Agreement (beginning with the partial year July to Dec. 2013 as the first applicable period): \$25 for each ton below tonnage level necessary to meet Diversion goal
- b) For every Recycling or Green Waste Container Collected as Refuse without issuing a red tag or other warning per Section 4.2.3 which exceeds ten (10) failures per calendar year: \$25 per Cart

5. Timeliness of Submissions to City

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

- i) Monthly Reports: \$50 per day
- ii) Annual Reports: \$100 per day

6. Accuracy of Billing

Each Customer invoice that is not prepared in accordance with the City's approved rate schedule, or includes charges not identified on the City-approved rate schedule or otherwise approved in writing by the City, in excess of ten (10) invoices annually, and that are not accurately corrected in the next Billing run:

\$25 per invoice, not to exceed \$2,500 per Billing run

7. Cooperation with Service Provider Transition

- a) For each day routing information requested by City Manager in accordance with Section 12.8 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service : \$1,000/day
- b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to new service provider servicing Customers with access issues, as described in Section 12.8: \$1,000/day
- c) For delay in not meeting the requirements contained in Sections 7.3 and 12.8 in a timely manner, in addition to the daily liquidated damages for breach under 7(a) and 7(b) above, liquidated damages of: \$10,000

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

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

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

**D. Timing of Payment.** Contractor shall pay any liquidated damages assessed by City Manager within ten (10) days after they are assessed. If they are not paid within the ten (10) day period, City may proceed against the performance bond required by the Agreement or find Contractor in default and terminate this Agreement pursuant to Section 11.2, or both.

## **11.4 Excuse from Performance**

### **11.4.1 Force Majeure**

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

### **11.4.2 Labor Unrest**

Labor unrest, including but not limited to strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action conducted by the Contractor's employees or directed at the Contractor will be considered an excuse from performance to the extent that Contractor meets the terms of this Section 11.4. Notwithstanding other remedies to which the City shall be entitled under this Agreement in event of failure to perform, in the event of Contractor's failure to perform, or anticipated failure to perform, due to labor unrest, Contractor shall:

- 1) Provide a contingency plan to the City Manager within ninety (90) days of the execution of this Agreement demonstrating how services will be provided during the period of labor unrest. The contingency plan is subject to City approval, and Contractor shall amend the plan to meet City requirements, including reasonably demonstrating how City's basic Collection and sanitary needs will be met to the City's satisfaction. Plan shall address, at a minimum, the priority of Collection by customer type (residents, hospitals, restaurants, nursing homes, etc.) and waste streams, additional Collection options to be provided (drop-off sites, etc.), source of additional personnel to be utilized, and detailed communications procedures to be used.



- 2) Notify City Manager sixty (60) days prior to the expiration of its drivers' labor agreement.
- 3) Meet the requirements agreed to in the contingency plan.
- 4) Meet requirements of 11.4.3 below.

Contractor shall meet all requirements under this Section or City may choose to revoke this excuse from performance offered under this Agreement and may choose to use enforcement provisions under this Agreement, including Sections 11.1, 11.2 and 11.3, in which case Contractor is not excused from performance and Contractor shall be obligated to continue to provide service notwithstanding the occurrence of any or all of such events.

#### **11.4.3 Procedures In Event of Excused Performance**

The party claiming excuse from performance under Section 11.4.1 or 11.4.2 shall, within two (2) days after such party has notice of such cause, give the other party notice of the facts constituting such cause and asserting its claim to excuse under this section.

Throughout service disruption, Contractor shall:

- 1) Provide City with a minimum of daily service updates.
- 2) Notify Customers on a real-time basis as to alternative Collection procedures. At a minimum, Contractor shall update its website and shall provide ongoing updates to City for use on its website, and a "reverse 911" contact method to reach all possible Customers. Should enhanced contact technologies become available, Contractor shall use such methods upon approval from City.

The interruption or discontinuance of the Contractor's services caused by one or more of the events excused shall not constitute a default by the Contractor under this Agreement. Notwithstanding the foregoing, however, if the Contractor is excused from performing its obligations hereunder for any of the causes listed in this section for a period of thirty (30) days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving ten (10) days' notice, in which case the provisions relative to contracting with third parties in Article 10 and this Article 11 will apply.

## 11.5 Notice, Hearing and Appeal of City Breach

- (A) Administrative Hearing. Should Contractor contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Manager requesting an administrative hearing on the allegation. A hearing officer shall be appointed by the City Manager, and the hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the City Manager. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling shall be advisory only.
- (B) Other Remedies; Claims. Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and a thirty (30) day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officers decision.
- (C) Actions for Damages. As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by Government Code section 910 et seq, within thirty (30) days of the date of the occurrence giving rise to the claim for damages.

## 11.6 Assurance of Performance

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

## ARTICLE 12

### MISCELLANEOUS PROVISIONS

#### 12.1 Relationship of Parties

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

#### 12.2 Compliance with Law

In providing the services required under this Agreement, Contractor shall at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and any federal, state, regional or local administrative and regulatory agencies, now in force and as they may be enacted, issued or amended, including but not limited to the payment of prevailing wage, if applicable.

#### 12.3 Governing Law

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

#### 12.4 Jurisdiction

Except for those matters where Federal Courts have exclusive jurisdiction, any lawsuits between the Parties arising out of this Agreement shall be brought and concluded in the courts of the State of California, which shall have exclusive jurisdiction over such lawsuits.

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

## **12.5 Assignment**

Except as may be provided for in Article 10 (City's Right to Perform Service), Contractor shall not assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement (collectively referred to as an "assignment") to any other Person without the prior written consent of City Council. Any such assignment made without the consent of City shall be void and the attempted assignment shall constitute a material breach of this Agreement.

For purposes of this section the term "assignment" shall be given the broadest possible interpretation, and shall include, but not be limited to (i) a sale, exchange or other transfer of substantially all of Contractor's assets dedicated to service under this Agreement to a third party; (ii) a sale, exchange or other transfer of outstanding common stock of Contractor to a third party provided said sale, exchange or transfer may result in a change of control of Contractor; (iii) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Contractor; (iv) any assignment by operation of law, including those resulting from mergers or acquisitions by or of Contractor of any of its Affiliates, insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of Contractor's property, or transfer occurring in the event of a probate proceeding; and (v) any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership, or change of control of Contractor.

Contractor acknowledges that this Agreement involved rendering a vital service to City's residents and businesses, and that City has selected Contractor to perform the services specified herein based on (1) Contractor's experience, skill and reputation for conducting its Solid Waste Handling Services in a safe, effective and responsible fashion, at all times in keeping with applicable Environmental Laws, regulations and best Solid Waste management practices, and (2) Contractor's financial resources to maintain the required equipment and to support its indemnity obligations to City under

this Agreement. City has relied on each of these factors, among others, in choosing Contractor to perform the services to be rendered by Contractor under this Agreement.

If Contractor requests City's consideration of and consent to an assignment, City may deny or approve such request in its sole and absolute discretion. Any request for an assignment must be approved by the City Manager, and no request by Contractor for consent to an assignment need be considered by City unless and until Contractor has met (or with respect to matters that would only occur upon completion of the assignment if approved, made reasonable assurances that it will meet) the following requirements:

- a) Contractor shall pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.
- b) Contractor shall pay a transfer fee to the City equal to one percent (1%) of the annual Gross Receipts for the most recent twelve (12) months prior to the effective date of the change of ownership, multiplied by the number of remaining years, or fraction thereof, under this Agreement. (This requirement will not be required in the event of an assignment to an Affiliate of Contractor);
- c) Contractor shall furnish City with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years. (This requirement shall not be required of an Affiliate.)
- d) Contractor shall furnish City with a pro-forma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such pro-forma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations. (This requirement shall not be required of an Affiliate.)

- e) Contractor shall furnish City with satisfactory proof: (i) that the proposed assignee has at least ten (10) years of Solid Waste management experience on a scale equal to or exceeding the scale of operations conducted by Contractor under this Agreement; (ii) that in the last five (5) years, the proposed assignee has not suffered any significant citations or other censure from any federal, state or local agency having jurisdiction over its Solid Waste management operations due to any significant failure to comply with state, federal or local Environmental Laws and that the assignee has provided City with a complete list of any such citations and censures; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its Solid Waste management practices in accordance with sound Solid Waste management practices in full compliance with all federal, state and local laws regulating the Collection and Disposal of Solid Waste including Hazardous Substances; and, (v) of any other information required by City to ensure the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

Under no circumstances shall City be obliged to consider any proposed assignment by City if Contractor is in default at any time during the period of consideration. Should City consent to any assignment request, such assignment shall not take effect until all conditions relating to City's approval have been met.

## **12.6 Contracting or Subcontracting**

Contractor shall not utilize any subcontractors, in direct interaction with City customers or City staff, for the performance of the services under this Agreement, except with the consent of the City Manager, which may be withheld or delayed at its sole and absolute discretion.

## **12.7 Binding on Assigns**

The provisions of this Agreement shall inure to the benefit to and be binding on the permitted assigns (if any) of the Parties.

## **12.8 Cooperation in Preparation for Termination or Expiration of Contract**

Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause prior to the end of the Term, Contractor shall cooperate fully with City and any

subsequent Solid Waste enterprise it designates to assure a smooth transition of Solid Waste Handling Services. Contractor's cooperation shall include, but not be limited to, providing route lists, Billing information and other operating records needed to service all Premises covered by this Agreement. Cooperation is required in a timely manner to assist with the City's preparation of a request for proposals or a new agreement, as well as at the time of transition. The failure to cooperate with City following termination shall be conclusively presumed to be grounds for specific performance of this covenant and/or other equitable relief necessary to enforce this covenant.

Contractor shall provide a new service provider with all keys, security codes and remote controls used to access garages and Bin enclosures. Contractor shall be responsible for coordinating transfer immediately after Contractor's final pickups, so as not to disrupt service. Contractor shall provide City with detailed route sheets containing service names and addresses, Billing names and addresses, monthly rate and service levels (number and size of Containers and pickup days) at least ninety (90) days prior to the transition date, and provide an updated list two (2) weeks before the transition and a final list of changes the day before the transition. Contractor shall provide means of access to the new service provider at least one (1) full business day prior to the first day of Collection by another party, and always within sufficient time so as not to impede in any way the new service provider from easily servicing all Containers.

## **12.9 Parties in Interest**

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

## **12.10 Waiver**

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

### **12.11 Contractor's Investigation**

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

### **12.12 Condemnation**

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

### **12.13 Notice**

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

If to City:

City Manager  
City of Hermosa Beach  
1315 Valley Drive  
Hermosa Beach, California 90254

If to Contractor: Gary Clifford  
Chief Operating Officer  
Athens Services  
14048 Valley Boulevard  
City of Industry, California 91746

A copy of such communications shall also be electronically mailed to the recipient party. The sending party shall confirm the current e-mail address of the City Manager or Chief Operating Officer at the time of notice. The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.



Notice shall be deemed given on the day it is personally delivered or, if mailed, three (3) days from the date it is deposited in the mail.

#### **12.14 Representatives of the Parties**

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

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

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

City may investigate all options for the Collection, transporting, Recycling, processing and Disposal of Solid Waste for periods during which this Agreement has expired or been terminated. Without limiting the generality of the foregoing, City may solicit proposals from Contractor and from third parties for the provision of Solid Waste Handling Services which are the subject of this Agreement, including without limitation Collection services, Disposal services, Recycling services, Green Waste services and processing, and any combination thereof, and may negotiate and execute agreements for such services which will take effect upon the expiration or earlier termination of this Agreement pursuant to Section 11.1 or otherwise.

#### **12.16 Compliance with Municipal Code**

Contractor shall comply with those provisions of the municipal code of City which are applicable, and with any and all amendments to such applicable provisions during the Term of this Agreement.

### **12.17 Privacy**

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

### **12.18 Proprietary Information, Public Records**

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

### **12.19 Entire Agreement**

This Agreement contains the entire integrated agreement and understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, promises, proposals (including Contractor's Proposal), and agreements between the Parties, whether written or oral. The Parties acknowledges this document has been executed with the consent and upon the advice of counsel. Each of the Parties acknowledges that no Party or agent or attorney of any other party has made any promise, representation, or warranty, express or implied, not contained in this Agreement, to induce the other Party to execute this instrument.

### **12.20 Section Headings**

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

### **12.21 References to Laws and Other Agreements**

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

### **12.22 Interpretation**

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

### **12.23 Agreement**

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

### **12.24 Severability**

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

### **12.25 Exhibits**

Each of Exhibits identified as Exhibit "1" through "12" is attached hereto and incorporated herein and made a part hereof by this reference.

### **12.26 Attorneys' Fees**

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorney's fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to

have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

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

CITY OF HERMOSA BEACH

("City")

DATED: \_\_\_\_\_  
CITY OF HERMOSA BEACH

DATED: \_\_\_\_\_  
Arakelian Enterprises Inc. dba Athens Services

By: \_\_\_\_\_  
Patrick Bobko  
Mayor

By: \_\_\_\_\_  
Ron Arakelian Jr.  
Chairman of the Board

Approved as to form:

By: \_\_\_\_\_  
Michael Jenkins  
City Attorney

By: \_\_\_\_\_  
Michael Arakelian  
Secretary/Treasurer

ATTEST:

\_\_\_\_\_  
Elaine Doerfling  
City Clerk

**EXHIBIT 1**  
**RESERVED**

## EXHIBIT 2 INITIAL MAXIMUM RATES

Following are the rates for July 1, 2013 through June 30, 2014:

<b>Monthly Residential Cart Service Rates (Option 1: Cart System)</b>				
Standard Service Includes one refuse cart and one or more recycling carts. Green waste carts are provided on a subscription basis.				
Cart Size:	20-gallon*	35-gallon*	64-gallon*	96-gallon*
Standard Service - based upon refuse cart size	\$5.69	\$6.69	\$10.69	\$14.69
Additional Refuse Cart - above one	n/a	\$4.00	\$6.00	\$8.00
Additional Recycling Cart	\$0	\$0	\$0	\$0
Each Yard Waste Cart	n/a	\$3.70	\$4.20	\$4.70
Alternative "Can" Service (if carts not feasible)		Equivalent cart rates based on capacity		
Active Military Rate Reduction -		above rates reduced by 25%		
Senior Low Income Discount -		above rates (excluding 20-gallon rate) reduced by 10%		
<b>Other Cart Rates and Services (Charged in Addition to Monthly Cart Service Rates)</b>				
Walk-Out Service - upon request			\$4.00	
Walk-Out Service - authorized disabled customers			No charge	
Additional Special Overage Pickup for Automated Cart Customers (in excess of six pickups per year)			\$5 per pickup	
Additional Bulky Item pickups (in excess of two free pickups per dwelling unit per year)			\$30.00 per pickup	
Cart Exchange (in excess of free exchanges to be provided)			\$15 per request	
Returned Check ("NSF") Fee (applicable to all customers)				
Credit Card Declined Fee (applicable to all customers)				
Optional HHW Door-to-Door Collection - per dwelling unit			\$0.45/month	

\*Including all City fees, including \$0.25/home/month AB 939 fee.

## EXHIBIT 2 INITIAL MAXIMUM RATES (continued)

Following are the rates for July 1, 2013 through June 30, 2014:

<b>Monthly Bin Rates(1)</b>									
<b>Container Size</b>	<b>Pickups per week</b>								
	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>Extra Empty</b>	
<b>Refuse</b>									
32-gallon cart (2)	\$23.33	\$40.87	\$57.45	\$74.99	\$91.56	\$109.10	\$136.29		
64-gallon cart (2)	\$37.02	\$64.39	\$90.80	\$117.2	\$143.61	\$170.98	\$211.86		
96-gallon cart (2)	\$50.69	\$84.98	\$119.26	\$153.55	\$187.83	\$222.12	\$256.40		
1 yard bin	\$69.35	\$104.56	\$140.84	\$176.06	\$210.21	\$246.49	\$288.10	\$40.50	
1.5 yard bin	\$77.36	\$117.38	\$167.00	\$197.42	\$236.37	\$315.86	\$369.75	\$40.50	
2 yard bin	\$93.91	\$145.14	\$197.45	\$248.69	\$292.46	\$337.30	\$393.87	\$40.50	
3 yard bin	109.92	\$170.77	\$230.56	\$291.41	\$351.19	\$410.98	\$482.50	\$52.07	
4 yard bin	\$132.33	\$204.93	\$309.53	\$351.20	\$423.80	\$497.46	\$581.79	\$52.07	
6 yard bin	\$166.51	\$258.34	\$351.24	\$443.08	\$535.98	\$627.82	\$734.59	\$52.07	
8 yard bin	\$207.07	\$322.40	\$434.53	\$545.59	\$652.39	\$764.52	\$895.85	\$61.78	
<b>Recycling</b>									
18-gallon cart (3)	\$7.41	n/a							
32-gallon cart (3)	\$11.58	\$20.27	\$28.47	\$37.15	\$45.36	\$54.04	\$68.55		
64-gallon cart (3)	\$18.34	\$31.82	\$44.87	\$57.90	\$70.93	\$84.44	\$104.70		
96-gallon cart (3)	\$25.09	\$41.98	\$58.87	\$75.75	\$92.64	\$109.53	\$126.42		
1 yard bin	\$30.88	\$46.32	\$62.24	\$77.68	\$92.64	\$108.56	\$126.90		
1.5 yard bin	\$34.26	\$51.63	\$73.34	\$86.37	\$103.26	\$138.48	\$162.12		
2 yard bin	\$41.50	\$63.69	\$86.37	\$108.56	\$127.38	\$146.68	\$171.29		
3 yard bin	\$48.25	\$74.31	\$99.88	\$125.93	\$151.51	\$177.08	\$207.96		
4 yard bin	\$57.90	\$88.78	\$134.14	\$151.02	\$181.90	\$213.27	\$249.45		
Locking Bin Service	\$5.79	\$5.79	\$5.79	\$5.79	\$5.79	\$5.79	\$5.79		
Scout Truck Service	\$11.57	\$11.57	\$11.57	\$11.57	\$11.57	\$11.57	\$11.57		
Push-Out Service	\$11.57	\$11.57	\$11.57	\$11.57	\$11.57	\$11.57	\$11.57		

(1) Including all City fees.

(2) Applicable to businesses. All residential cart customers are charged in accordance with the Residential Cart Service Rates on page 2-1.

(3) Not applicable to residents with cart refuse service; such customers receive recycling service at no additional charge.

**EXHIBIT 2**  
**INITIAL MAXIMUM RATES (continued)**

Following are the rates for July 1, 2013 through June 30, 2014:

<b>Additional Service Charges</b>	<b>Rate Per Service*</b>
Porter Service (total amount to be shared by affected customers per Section 4.1.14)	\$5,500 per month
Commercial Bulky Item Pickup:	
- 1 to 2 items	\$27.31/pickup
- 3 to 5 items	\$54.61/pickup
- 6 to 10 items	\$109.21/pickup
- Each additional item on same pickup	\$27.31/add'l item
Bin Return Trip/Dry Run Fee	\$50.00 per trip
Bin Re-delivery Fee (if bins are pulled for non-payment)	\$45.00 per bin
Bin Cleaning (over once per year)	\$40.00
3-yard Temporary Bin	
- Per dump (delivery, disposal and 7-day rental included)	\$100.35
- Rental per day after 7 days without a dump	
Special Event Litter Boxes	
- Rate per box	\$4.50
- Rate per box of 200 liners	\$50.00
Emergency Service Rates - one crew and one collection truck	\$85.00/hour

\*Including all City fees, inclusive of AB 939 fees on page 2-5.



**EXHIBIT 2**  
**INITIAL MAXIMUM RATES (continued)**

Following are the rates for July 1, 2013 through June 30, 2014:

<b>Roll-off Box Charges</b>	<b>Rate*</b>
<u>Roll-off Box Service – Pull Plus Dump</u>	
- Standard Roll-off Box (any size) - Rate per pull (including delivery, and rental)	\$181.60 per pull
- Compactor roll-off box – Rate per pull (does not include provision of compactor)	
20 yard compactor	\$198.52 per pull
30 yard compactor	\$201.02 per pull
40 yard compactor	\$203.52 per pull
- Compactor Monthly Lease	\$550.00 per month
Per Ton Rate	\$ 61.56 per ton
Per Ton Rate – Pier Compactor Roll-Off Only, for composting	\$ 65.00 per ton
Per day rental after 7 days without a pull	\$10.00 per day
<u>Additional Roll-off Box Fees</u>	
- Overweight charge (per ton over ten tons/load)	25% of Per Ton Rate
- Dry Run/Redelivery/Return Trip/Relocation Fee	\$50.00

\*Including all City fees, inclusive of AB 939 fees on page 2-5.

**EXHIBIT 2  
INITIAL MAXIMUM RATES (continued)**

**AB 939 Fees Included in the Above Rates**

Refuse Container Size	Number of Collections per Week						
	1	2	3	4	5	6	7
32-Gallon Cart	\$ 0.17	\$ 0.34	\$ 0.51	\$ 0.68	\$ 0.85	\$ 1.02	\$ 1.19
64-Gallon Cart	\$ 0.35	\$ 0.70	\$ 1.05	\$ 1.40	\$ 1.75	\$ 2.10	\$ 2.45
96-Gallon Cart	\$ 0.51	\$ 1.02	\$ 1.53	\$ 2.04	\$ 2.55	\$ 3.06	\$ 3.57
1 Cubic Yard	\$ 1.08	\$ 2.16	\$ 3.24	\$ 4.32	\$ 5.40	\$ 6.48	\$ 7.56
1.5 Cubic Yard	\$ 1.62	\$ 3.24	\$ 4.86	\$ 6.48	\$ 8.10	\$ 9.72	\$ 11.34
2 Cubic Yard	\$ 2.17	\$ 4.34	\$ 6.51	\$ 8.68	\$ 10.85	\$ 13.02	\$ 15.19
3 Cubic Yard	\$ 3.25	\$ 6.50	\$ 9.75	\$ 13.00	\$ 16.25	\$ 19.50	\$ 22.75
4 Cubic Yard	\$ 4.33	\$ 8.66	\$ 12.99	\$ 17.32	\$ 21.65	\$ 25.98	\$ 30.31
6 Cubic Yard	\$ 6.50	\$ 13.00	\$ 19.50	\$ 26.00	\$ 32.50	\$ 39.00	\$ 45.50
8 Cubic Yard	\$ 8.66	\$ 17.32	\$ 25.98	\$ 34.64	\$ 43.30	\$ 51.96	\$ 60.62

Container/Service Type	AB 939 Fee	
<u>Roll-Off Box Pulls</u>		
Standard Roll-Off Box - 20, 30, 40 yard	\$ 10.00	per pull
Compactor Roll-Off Box - 20 yard	\$ 5.00	per pull
Compactor Roll-Off Box - 30 yard	\$ 7.50	per pull
Compactor Roll-Off Box - 40 yard	\$ 10.00	per pull
Temporary Bin 3 Cubic Yard	\$ 0.75	per dump

## EXHIBIT 3A

### EXAMPLE RATE ADJUSTMENT FORMULA - CART & BIN

Row	Adjustment Factor	Index	Old Index Value	New Index Value	Percent Change In Index ((Column B/Column A) -1)
1	Labor	(1)	109.7	112.2	2.3%
2	Fuel	(2)	170.6	173.2	1.5%
3	Equipment	(3)	125.1	129.1	3.2%
4	Disposal	(4)	219.960	221.931	0.9%
5	All Other	(5)	219.960	221.931	0.9%

**Step Two: Determine components**

Row	Adjustment Factor	Index	D Cost Factor Category Weighted as a % of Component Total (6)	E Percent Change In Index (from Column C)	F Total Weighted Change (Columns D x E)
6	Labor	(1)	25.0%	2.3%	0.6%
7	Fuel	(2)	5.0%	1.5%	0.1%
8	Equipment	(3)	13.0%	3.2%	0.4%
9	Disposal	(4)	27.0%	0.9%	0.2%
10	All Other	(5)	<u>30.0%</u>	0.9%	<u>0.3%</u>
11	Total		100.0%		1.6%

**Step Three: Apply percentage change to rates**

Row	Example Rate Categories	G Current Customer Rate (7)	H Total Weighted Percentage Change (from Column F)	I Rate Increase or Decrease (Column G x Column H)	J Adjusted Rate (Column G + Column I)
12	Res. service w/64-gal. refuse	\$ 10.69	1.6%	\$ 0.17	\$ 10.86
13	Res. service w/32-gal. refuse	\$ 6.69	1.6%	\$ 0.11	\$ 6.80
14	Extra 64-gal refuse cart	\$ 6.00	1.6%	\$ 0.10	\$ 6.10
15	Extra 32-gal refuse cart	\$ 4.00	1.6%	\$ 0.06	\$ 4.06
16	Alt.= Residential rate	\$ 10.69	1.6%	\$ 0.17	\$ 10.86
17	3 cu.yd. bin 1x week	\$ 190.92	1.6%	\$ 3.05	\$ 193.97
18	3 cu.yd. bin 2x week	\$ 170.77	1.6%	\$ 2.73	\$ 173.50
19	3 yd bin, extra pickup	\$ 52.07	1.6%	\$ 0.83	\$ 52.90
20	Commercial 96 gal. cart	\$ 50.69	1.6%	\$ 0.81	\$ 51.50

**Step Four: Re-weight cost components**

Row	Adjustment Factor	Index	K Cost Component (Column D)	L Percent Change in Index (Column E)	M Change in Cost Component Weightings (Column K x Column L)	N Adjusted Cost Component Weightings (Column K + Column M)	O Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
21	Labor	(1)	25.0%	2.3%	0.6%	25.6%	25.2%
22	Fuel	(2)	5.0%	1.5%	0.1%	5.1%	5.0%
23	Equipment	(3)	13.0%	3.2%	0.4%	13.4%	13.2%
24	Disposal	(4)	27.0%	0.9%	0.2%	27.2%	26.8%
25	All Other	(5)	<u>30.0%</u>	0.9%	0.3%	<u>30.3%</u>	<u>29.8%</u>
26	Total		100.0%			101.6%	100.0%

(1) Employment Cost Index CIU20100005200000I, Total compensation, Private industry, Index number, Transportation and material moving - average annual change.\*

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

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

(4) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change\* or 5%, whichever is lower.

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

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

(7) Example rates listed. Adjustment applies to all applicable rate categories.

\* See Exhibit 3C.

## EXHIBIT 3B

### EXAMPLE RATE ADJUSTMENT FORMULA - ROLL-OFF BOX

**Step One: Calculate percentage change in indices**

Row	Adjustment Factor	Index	A Old Index Value	B New Index Value	C Percent Change In Index ((Column B/ Column A) -1)
1	Service Component (Pull Rate)				
2	Labor	(1)	109.7	112.2	2.3%
3	Fuel	(2)	170.6	173.2	1.5%
4	Equipment	(3)	125.1	129.1	3.2%
5	All Other	(4)	219.960	221.931	0.9%
6	Refuse/Ton	(5)	219.960	221.931	0.9%

**Step Two: Determine components**

Row	Adjustment Factor	Index	D Cost Factor Category Weighted as a % of Component Total (6)	E Percent Change In Index (from Step One, Column C)	F Total Weighted Change (Columns D x E)
7	Service Component (Pull Rate)				
8	Labor	(1)	41.0%	2.3%	0.9%
9	Fuel	(2)	18.0%	1.5%	0.3%
10	Equipment	(3)	13.0%	3.2%	0.4%
11	All Other	(4)	<u>28.0%</u>	0.9%	<u>0.3%</u>
12	Service Component Total		100.0%	n/a	1.9%
13	Refuse/Ton	(5)	100.0%	0.9%	0.9%

**Step Three: Apply percentage change to rates**

Row	Rate Category	G Current Customer Rate	H Total Weighted Percentage Change (from Column F)	I Rate Increase or Decrease (Column H x Column I)	J Adjusted Rate (Column H + Column J)
14	Standard Rolloff Box Pull Rate	\$ 181.60	1.9%	\$ 3.45	\$ 185.05
15	30 yd. Compactor Rolloff Box Pull Rate	\$ 201.03	1.9%	\$ 3.82	\$ 204.85
16	Refuse/Ton	\$ 61.56	0.9%	\$ 0.55	\$ 62.11

**Step Four: Re-weight service component cost components**

Row	Adjustment Factor	Index	K Cost Component (Column D)	L Percent Change in Index (Column E)	M Change in Cost Component Weightings (Column K x Column L)	N Adjusted Cost Component Weightings (Column K + Column M)	O Cost Components Reweighted to Equal 100% (Column N Row divided by Column N Total)
17	Labor	(1)	41.0%	2.3%	0.9%	41.9%	41.1%
18	Fuel	(2)	18.0%	1.5%	0.3%	18.3%	18.0%
19	Equipment	(3)	13.0%	3.2%	0.4%	13.4%	13.2%
20	All Other	(4)	<u>28.0%</u>	0.9%	0.3%	<u>28.3%</u>	<u>27.7%</u>
21	Total		100.0%			101.9%	100.0%

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

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

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

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

(5) Consumer Price Index for All Urban Consumers, less food and energy, U.S. city average - average annual change\*, or 5%, whichever is lower.

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

\* See Exhibit 3C.

### **EXHIBIT 3C**

## **EXAMPLE RATE ADJUSTMENT FORMULA - CALCULATION FOR AVERAGE ANNUAL CHANGE IN PUBLISHED PRICE INDICES**

Rate adjustment indices for labor, fuel, equipment and “all other” are calculated using the “average annual change” as demonstrated in the example below, measured for the twelve months ended the March before each rate adjustment, as compared to the twelve months ended the prior March. The Bureau of Labor Statistics publishes these monthly and quarterly indices.

The following example is for the Consumer Price Index for All Urban Consumers all items less food and energy index - U.S. City average that is used to adjust the “all other” cost components. If a rate adjustment based on this CPI index were to be implemented as of July 1, 2013, the twelve-month average annual index for the period ended September 2012 of 228.653 would have been the “New Index Value” to be used in Column B of the example rate adjustment formulas in Exhibits 3A and 3B, and the twelve-month average annual index for the period ended September 2011 223.808 would have been the “Old Index Value” in Column A. This would have resulted in a 2.2% increase to the “all other” cost components in Column C.

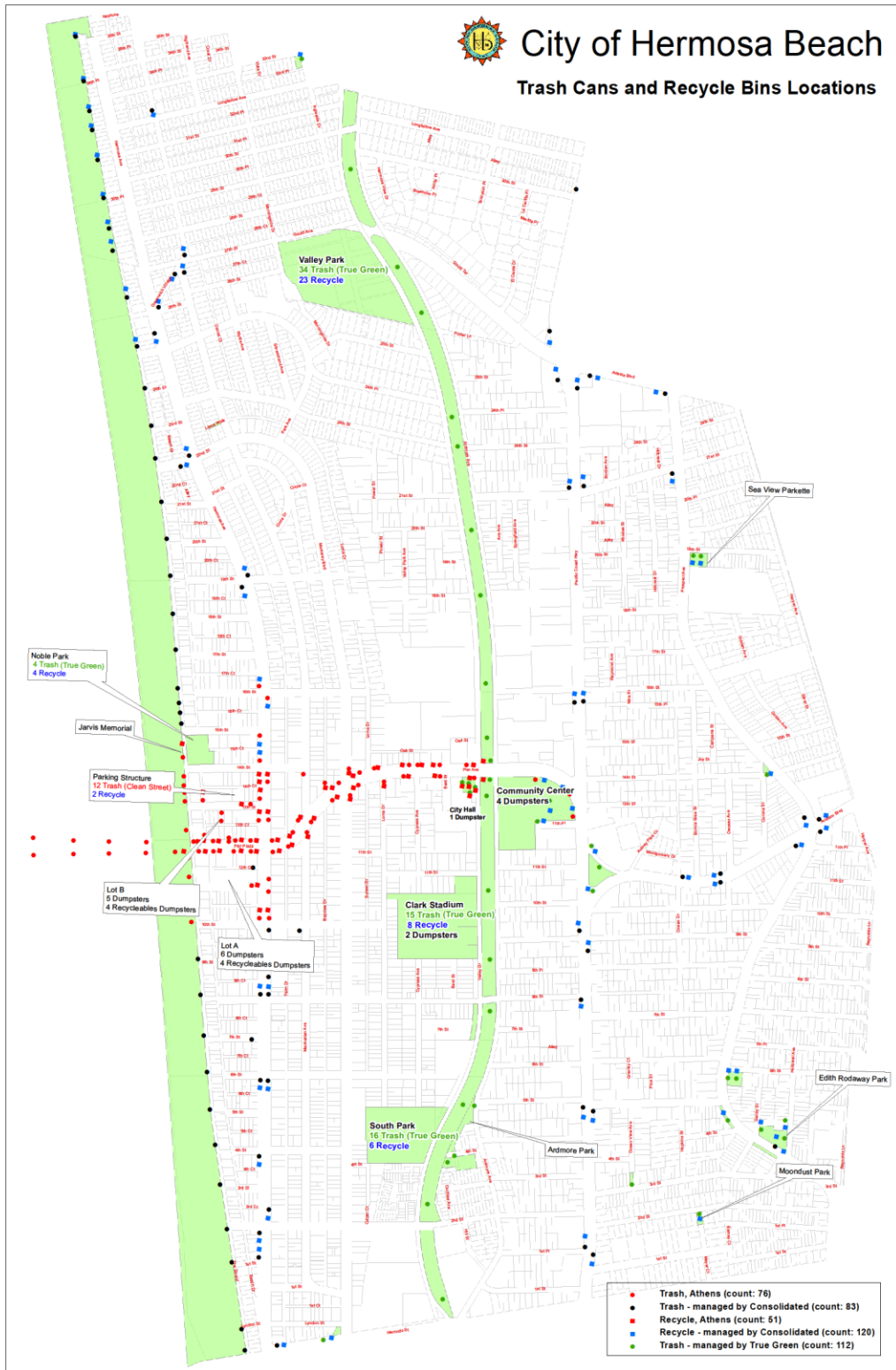
#### **Consumer Price Index - All Urban Consumers, U.S. City Average**

##### **All items less food and energy, CUUR0000SAOL1E**

Year	Jan	Feb	March	April	May	June	July	August	Sept	Oct	Nov	Dec	Average
2010										222.079	222.077	221.795	
2011	222.177	223.011	223.690	224.118	224.534	224.891	225.164	225.874	226.289				223.808
2011										226.743	226.859	226.740	
2012	227.237	227.865	228.735	229.303	229.602	229.879	229.893	230.196	230.780				228.653
										<b>Average Annual Change:</b>			<b>2.2%</b>

# EXHIBIT 4

## CITY LITTER AND RECYCLING CONTAINER COLLECTION MAP



**EXHIBIT 5  
CORPORATE GUARANTY**

**Not Applicable**

**EXHIBIT 6**

**Contractor's Faithful Performance Bond**

KNOW ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_, a California \_\_\_\_\_, as PRINCIPAL, and \_\_\_\_\_, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of five hundred thousand dollars (\$500,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

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

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

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

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



In the event suit is brought by OBLIGEE to enforce the provisions of this bond, said Surety will pay to OBLIGEE a reasonable attorney's fee, plus costs of suit, in an amount to be fixed by the court.

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 2013

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

\_\_\_\_\_  
SURETY

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

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

(SEAL)

(SEAL)

**EXHIBIT 7**

**RESERVED**

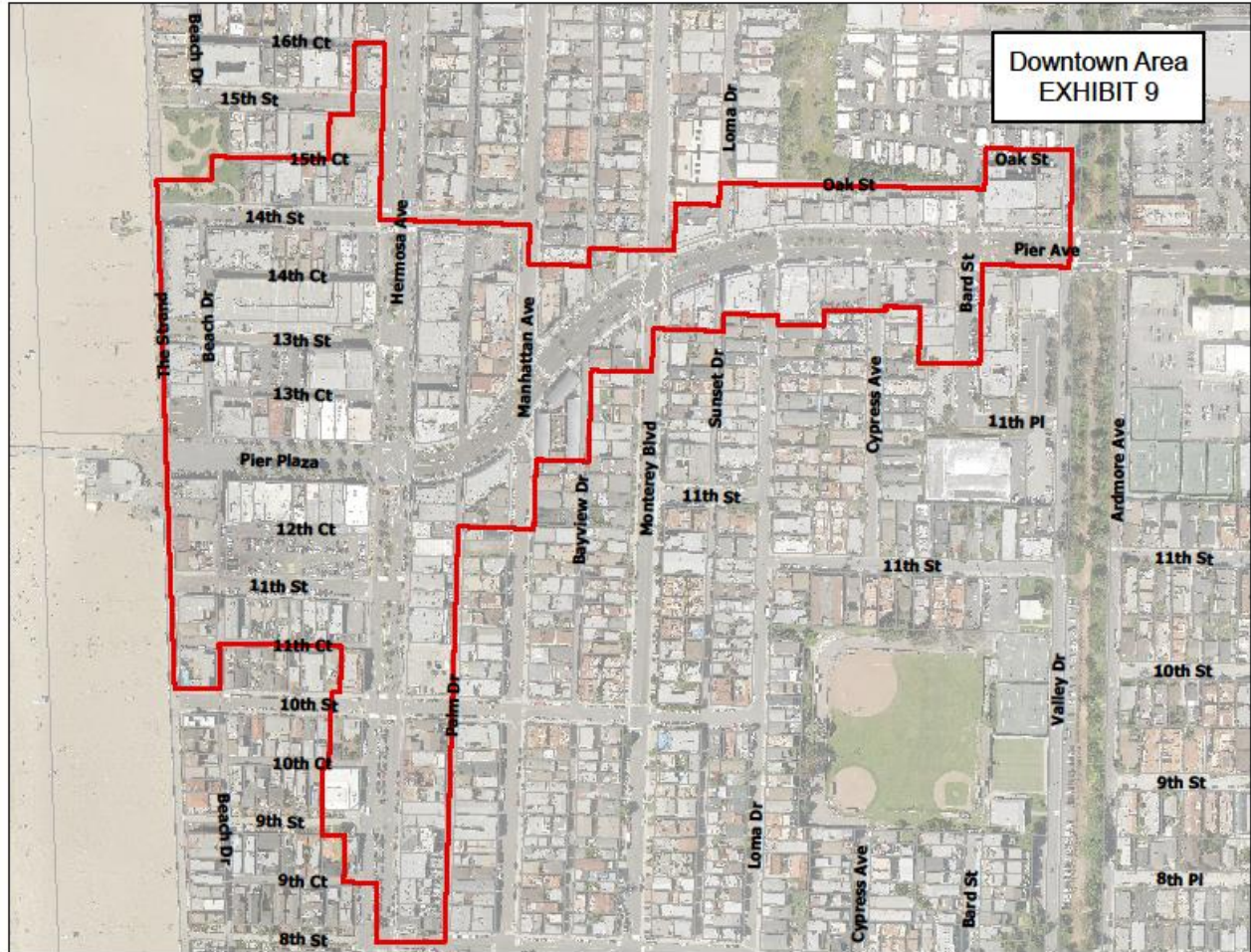
**EXHIBIT 8**

**INITIAL SCOUT SERVICE CUSTOMERS**

<b>Addresses With Scout Service at Start of Contract</b>		
835 15TH ST	1600 ARDMORE AVE	30 13TH ST
845 15TH ST	1500 THE STRAND	930 1ST ST
621 9TH ST	630 2ND ST	721 3RD ST
2411 PROSPECT AVE	904 AVIATION BLVD	940 1ST ST
540 1ST ST	926 1ST ST	2205 PACIFIC COAST HWY
417 25TH ST	837 5TH ST	1301 MANHATTAN AVE
1628 PROSPECT AVE	701 4TH ST	22 PIER AVE
708 8TH ST	1820 ARDMORE AVE	901 AVIATION BLVD
68 PIER AVE	1820 ARDMORE AVE	321 PIER AVE
73 PIER AVE	2001 PACIFIC COAST HWY	743 24TH PL
959 AVIATION BLVD	2001 PACIFIC COAST HWY	1310 PACIFIC COAST HWY
401 MANHATTAN AVE	933 6TH ST	53 PIER AVE
552 11TH PL	446 MONTEREY BLVD	801 20TH ST
50 PIER AVE	1286 THE STRAND	1200 PACIFIC COAST HWY
50 PIER AVE	625 7TH ST	30 HERMOSA AVE
65 PIER AVE	30 PIER AVE	2447 PACIFIC COAST HWY
950 ARTESIA BLVD	8 PIER AVE	2401 PACIFIC COAST HWY
833 5TH ST	20 13TH ST	2515 VALLEY DR
1830 HERMOSA AVE	1645 VALLEY DR	1850 PACIFIC COAST HWY
935 1ST ST	839 6TH ST	20 PIER AVE
615 3RD ST	700 PACIFIC COAST HWY	1720 ARDMORE AVE
53 PIER AVE	2121 PACIFIC COAST HWY	1050 AVIATION BLVD
1301 MANHATTAN AVE	49 PIER AVE	640-650 HERMOSA AVE
1707 PACIFIC COAST HWY	1314 LOMA DR	139 HERMOSA AVE
90 PIER AVE	11 PIER AVE	139 HERMOSA AVE
500 PACIFIC COAST HWY	100 MONTEREY BLVD	104 HERMOSA AVE
1837 PACIFIC COAST HWY	950 1ST ST	417 25TH ST
972 ARTESIA BLVD	444 HERMOSA AVE	669 4TH ST
501 HERONDO ST	320 MASSEY ST	1072 AVIATION BLVD
712 9TH ST	15 15TH ST	21 PIER AVE
26 PIER AVE	1272 THE STRAND	1221 HERMOSA AVE
538 8TH ST	957 1ST ST	1016 THE STRAND
2100 PACIFIC COAST HWY	74 PIER AVE	31 PIER AVE
37 PIER AVE	720 21ST ST	36 PIER AVE
718 21ST ST	736 GOULD AVE	52 PIER AVE
867 AUBREY CT	1803 PACIFIC COAST HWY	415 HERONDO ST
447 HERONDO ST	834 1ST ST	414 2ND ST
19 PIER AVE	1134 CYPRESS AVE	660 5TH ST
960 1ST ST	710 9TH ST	39 PIER AVE
802 PACIFIC COAST HWY	77 15TH ST	840 LOMA DR
81 PIER AVE	77 15TH ST	1325 HERMOSA AVE
1560 PACIFIC COAST HWY	2309 PACIFIC COAST HWY	709 PIER AVE
1731 PACIFIC COAST HWY	655 2ND ST	703 PIER AVE

EXHIBIT 9

DOWNTOWN AREA



## EXHIBIT 10

### AREAS WHERE AUTOMATED SERVICE NOT FEASIBLE (CAN SERVICE AREAS)

#### Between Palm Drive and Manhattan Avenue

Containers placed on 28<sup>th</sup> Court - Addresses on 27<sup>th</sup> and 28<sup>th</sup> Streets

Containers placed on 29<sup>th</sup> Court - Addresses on 28<sup>th</sup> and 29<sup>th</sup> Streets

Containers placed on 30<sup>th</sup> Place - Addresses on 29<sup>th</sup> and 30<sup>th</sup> Streets

Containers placed on 31<sup>st</sup> Place - Addresses on 30<sup>th</sup> and 31<sup>st</sup> Streets

Containers placed on 32<sup>nd</sup> Place - Addresses on 31<sup>st</sup> and Longfellow Avenue

Containers placed on 33<sup>rd</sup> Place - Addresses on Longfellow and 33<sup>rd</sup> Streets

Containers placed on 34<sup>th</sup> Place - Addresses on 33<sup>rd</sup> and 34<sup>th</sup> Streets

Containers placed on Homer Street - Addresses on 34<sup>th</sup> and 35<sup>th</sup> Streets

#### Between Manhattan Ave and Valley Drive

Containers placed on 31<sup>st</sup> Place - Addresses on 30<sup>th</sup> and 31<sup>st</sup> Streets

Containers placed on 32<sup>nd</sup> Place - Addresses on 31<sup>st</sup> Street and Longfellow Avenue

#### Between Manhattan Avenue and Highland Avenue

Containers placed on 34<sup>th</sup> Place - Addresses on 33<sup>rd</sup> and 34<sup>th</sup> Streets

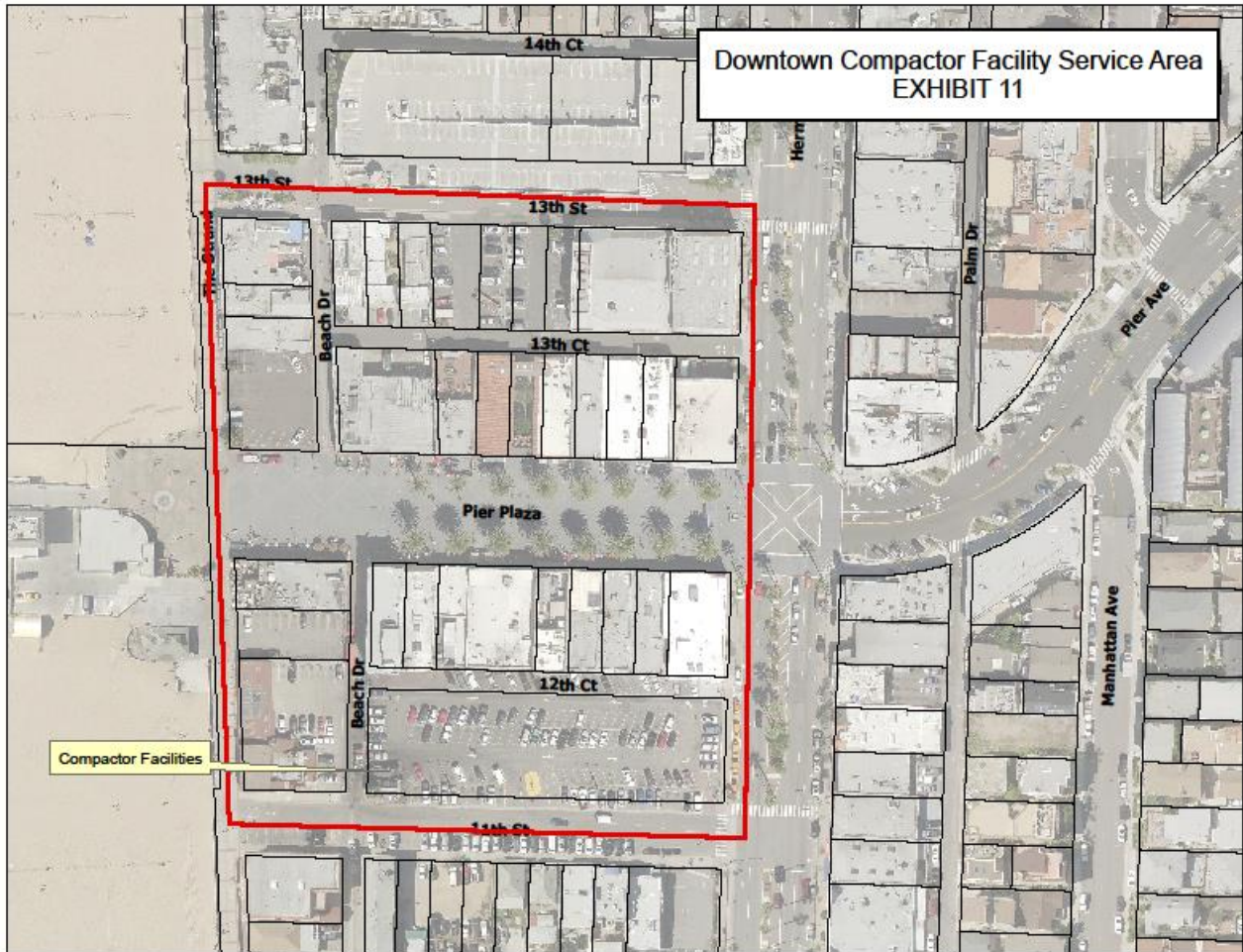
#### Between 22<sup>nd</sup> Street and 24<sup>th</sup> Street

Containers placed on Beach Drive - Addresses on Hermosa Drive and The Strand



EXHIBIT 11

DOWNTOWN COMPACTOR FACILITY SERVICE AREA



**EXHIBIT 12**

**NOTARY CERTIFICATION**

STATE OF CALIFORNIA)

COUNTY OF \_\_\_\_\_) ss:

On \_\_\_\_\_ before me, \_\_\_\_\_ (name), \_\_\_\_\_ (title), personally appeared \_\_\_\_\_

\_\_\_\_\_,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

Notary Public

**FIRST AMENDMENT TO AGREEMENT FOR INTEGRATED SOLID WASTE SERVICES BETWEEN THE CITY OF HERMOSA BEACH AND ARAKELIAN ENTERPRISES**

**THIS FIRST AMENDMENT TO AGREEMENT FOR INTEGRATED SOLID WASTE SERVICES** ("First Amendment") is made and entered into this 17th day of September, 2018, by and between the City of Hermosa Beach, a municipal corporation ("City") and Arakelian Enterprises, a California corporation ("Contractor").

**RECITALS**

- A. City entered into an exclusive franchise agreement with Contractor for Integrated Solid Waste Management Services ("Agreement") for a term of eight years on the 26<sup>th</sup> day of March, 2013.
  
- C. The parties desire by this First Amendment to modify the Agreement pertaining to the local office requirement and calculation of the Administrative Fee, effective July 1, 2018.

**NOW, THEREFORE**, in consideration of the foregoing, the parties agree as follows:

- 1. Section 5.1.1 is amended as follows:

**5.1.1 Local Office, Response Time**

Amend the first paragraph of section 5.1.1 to remove the requirement that the contractor shall maintain an office within City limits, for the term of the Agreement, staffed and open for Customers, at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays.

Every other term and provision in Section 5.1.1 remains in full force and effect.

- 2. Section 3.3 is amended as follows:

**3.3 Administrative Fee**

The Administrative Fee shall be adjusted annually, beginning with the July payment, by the percentage change in the Consumer Price Index for all Urban Customers (CPI-U), all items less food and energy - US City average for the twelve (12) month period ended the prior September.

**Except as modified above, the Agreement and each and every term and provision thereof remains in full force and effect.**



**IN WITNESS WHEREOF**, the parties hereto have executed this First Amendment on the date and year first above written.


City of Hermosa Beach, California

  
Mayor

ATTEST:

for   
City Clerk

APPROVED AS TO FORM:

  
City Attorney

CONTRACTOR:

BY:   
Arakelian Enterprises