



Meeting Date: 01/10/2012

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input checked="" type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other Study Session

Prepared By: Grant Dunne, Management Analyst III *Grant Dunne* Agenda Item No. 0-3

Reviewed By: City Manager *[Signature]* City Attorney *[Signature]* Finance *[Signature]* Public Works

DATE: December 30, 2011

TO: City Council

FROM: Rob Roshanian, Interim Public Works Director
Public Works Department

SUBJECT: Short Term Service Agreement for the Del Norte Regional Recycling and Transfer Station (Del Norte Facility) A-7465

RECOMMENDATION

That City Council approve and authorize the Mayor to execute a Service Agreement No. A-7465 for a one year term from February 1, 2012 to January 31, 2013 between the City of Oxnard and BLT Enterprises of Oxnard, Inc., a wholly owned subsidiary of Republic Services, Inc. for the Management and Operation of a Materials Recovery Facility and Transfer Station, Transfer of Waste for Disposal, and Marketing of Recovered Materials (Short Term Service Agreement); and to execute the attached Settlement Agreement and Mutual Release (Agreement No. A-7469).

DISCUSSION

On May 23, 1995, the City Council approved the existing service agreement between BLT Enterprises of Oxnard and the City. The Service Agreement has been amended four times, including an amendment entitled, "Consent to Merger and Second Amendment to Service Agreement," dated January 26, 1999, pursuant to which the City recognized that BLT Enterprises of Oxnard had been acquired by Republic Services, Inc., and including a Fourth Amendment to Service Agreement dated June 26, 2007 ("Fourth Amendment"), which recognized that Republic Services Inc. owns BLT Enterprises of Oxnard and manages and operates the facility. BLT Enterprises of Oxnard is a wholly owned subsidiary of Republic Services, Inc. It is one of a number of companies owned by Republic Services, Inc., each of which operates waste management facilities. A list of its current directors and officers is contained in Attachment No. 1. On January 31, 2012, the existing service agreement expires.

In preparation for a new long term service agreement, staff issued a Request for Qualifications in January 2009, requesting qualifications for the operation and management of the Del Norte Facility. By April 2009, staff had received and reviewed qualifications from 17 firms and by September 2009, staff had interviewed, evaluated and ranked six qualified firms.

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In October 2009, staff reported to the Utilities Task Force that BLT Enterprises, Inc. (not BLT Enterprises of Oxnard) and Waste Management were the two top firms. Staff issued a Request for Proposal to these firms for the operation and management of the Del Norte Facility. After interviews were completed and proposals evaluated, staff ranked BLT Enterprises, Inc. as the top firm.

On March 18, 2010, staff recommended and received approval at the Utilities Task Force Committee Meeting to negotiate a service agreement with BLT Enterprises, Inc. Staff has been negotiating an agreement with BLT Enterprises Inc.; however, negotiations are not complete.

As the expiration date of January 31, 2012 of the existing Service Agreement is approaching, staff recommends executing a new Short Term Service Agreement with Republic Services to January 31, 2013. In return for the one year Short Term Service Agreement, Republic Services will reduce its annual operating service fee by \$155,000. At present, the annual service fee is \$5,270,342, but the fee is reduced by \$500,000 each year pursuant to the Fourth Amendment. The total reduction therefore, in the Short Term Service Agreement for a one year term, as set forth in Section 13.14, is \$655,000. This reduction yields a service fee of \$4,615,342 for the one year term. There is no provision in the existing service agreement for month to month or other extremely short term extensions.

Also, as part of the consideration for the Short Term Service Agreement, Republic Services will cause its subsidiary, Consolidated Disposal Service, LLC, to dismiss a pending lawsuit against the City arising from an accident occurring at the facility in December of 2004 (the claim of the defendant has been settled by Consolidated at no cost to the City).

Staff's recommendation is for a one year term in return for reducing service fees by \$155,000. Republic Services has also proposed the following possible terms and corresponding service fee reductions:

Term	Term Date	12-mo. Annual Service Fee Reduction	Total Term Service Fee Reduction
1 year (Staff's recommendation)	February 1, 2012 to January 31, 2013	\$155,000	\$155,000
1.5 years or 18 months	February 1, 2012 to July 31, 2013	\$301,667	\$452,500
3 years	February 1, 2012 to January 31, 2015	\$330,833	\$992,500

The attached Short Term Service Agreement generally incorporates provisions of the original agreement and amendments, eliminates matters related to the construction and start-up of the facility which are no longer relevant, and incorporates the consideration to the City provided by Republic for the Short Term Agreement. The Short Term Service Agreement format is recommended by Bond Counsel to satisfy the requirements of the Internal Revenue Service.

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FINANCIAL IMPACT

The financial impact to Solid Waste Enterprise Fund will be positive due to the annual service fee reduction from Republic Services in the amount of \$155,000 over the one year term from February 1, 2012 to January 31, 2013. The annual value of the Service Agreement during the one year term is \$4,615,342. Appropriation has been established in the FY 2011-12 Solid Waste Operating Budget to provide for the cost of this service.

Attachment #1 – List of directors and officers

Attachment #2 - Service Agreement No. A-7465

Attachment #3 –Settlement Agreement and Mutual Release Agreement No. A-7469

Note: Attachment No. 1 has been provided to the City Council. Copies are available for review at the Help Desk in the Library after 6:00 p.m. on the Thursday prior to the Council meeting and at the City Clerk's Office after 8:00 a.m. on Monday.

Directors/Officers Report

As of January 03, 2012

BLT Enterprises of Oxnard, Inc.

Directors

Brian A. Bales	Director
Edward A. Lang, III	Director
Charles F. Serianni	Director

Officers

Jeff D. Andrews	President
Brian A. Bales	Vice President
Tim M. Benter	Vice President
Kurt A Bratton	Vice President
W. T. Eggleston, Jr.	Vice President
Michael P. Rissman	Vice President
Andrew J Sweet	Vice President
Lawrence Focazio	Vice President, Tax
Eileen B Schuler	Secretary
Tim M. Benter	Assistant Secretary
W. T. Eggleston, Jr.	Assistant Secretary
Michael P. Rissman	Assistant Secretary
Warren Semper	Assistant Secretary
Andrew J Sweet	Assistant Secretary
Edward A. Lang, III	Treasurer
Marsha A. Lacy	Assistant Treasurer

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("AGREEMENT") is entered into by and between CONSOLIDATED DISPOSAL SERVICES, LLC and REPUBLIC SERVICES, INC., their parent, and their past or present affiliates, subsidiaries, parents, joint venturers, representatives, shareholders, employee benefit plans, plan administrators, lenders, insurers and their successors and assigns (collectively, "REPUBLIC"), on the one hand, and the CITY OF OXNARD, ("OXNARD") on the other hand.

RECITALS

A. ZEFERINO CANCINO VALDOVINOS and his spouse, MARCELINA CANCINO (now deceased) filed a lawsuit (the "VALDOVINOS LITIGATION") against OXNARD and its employee, JOHN BRAY, in the Superior Court of the State of California for the County of Ventura, Case No. CIV237512. In the VALDOVINOS LITIGATION the plaintiffs alleged that Mr. Valdovinos sustained bodily injuries on December 16, 2004 when he was allegedly struck by a vehicle on the tipping floor at the Del Norte Transfer Station, 111 S. Del Norte Boulevard, Oxnard, California (the "ACCIDENT"). The plaintiffs in the VALDOVINOS LITIGATION stated causes of action claiming damages arising out of the alleged negligence of OXNARD and REPUBLIC for the bodily injuries suffered by Mr. Valdovinos.

B. REPUBLIC filed a lawsuit (the "REPUBLIC LITIGATION") against OXNARD in the Superior Court of the State of California County of Ventura Case No. CIV237332, asserting causes of action for breach of contract, negligence, and declaratory relief, alleging that OXNARD owed REPUBLIC damages for payments (including workers compensation benefits

paid) made by REPUBLIC as a result of the ACCIDENT.

C. OXNARD filed a cross-complaint in the REPUBLIC LITIGATION for express indemnity and declaratory relief against BLT ENTERPRISES OF OXNARD, INC. ("BLT") and REPUBLIC claiming, among other things, that BLT and REPUBLIC were responsible for the damages and injuries arising from the ACCIDENT.

D. OXNARD denies responsibility for the alleged damages and injuries arising from the ACCIDENT.

E. REPUBLIC and BLT deny responsibility for the alleged damages and injuries arising from the ACCIDENT.

F. The REPUBLIC LITIGATION and the VALDOVINOS LITIGATION have been consolidated.

G. REPUBLIC and BLT settled the VALDOVINOS LITIGATION obtaining releases in favor of OXNARD, JOHN BRAY, REPUBLIC and BLT. REPUBLIC claimed rights to assert Mr. and Mrs. Valdovinos' claims against OXNARD.

H. The parties continue to dispute their respective rights and obligations with respect to the matters alleged in the REPUBLIC LITIGATION and the VALDOVINOS LITIGATION. However, in the interest of avoiding significant future litigation costs, and without making any admission as to liability or otherwise, the parties now choose voluntarily to enter into this AGREEMENT.

I. REPUBLIC and OXNARD are currently negotiating a new contract for REPUBLIC'S continued operation of the Del Norte Transfer Station, 111 S. Del Norte Boulevard, Oxnard, California, on mutually acceptable terms.

("DNRRTS CONTRACT") It is the parties' intent that this AGREEMENT is contingent upon and shall only become effective upon the final execution of the DNRRTS CONTRACT by the parties.

**NOW, THEREFORE, IN CONSIDERATION OF THE PROMISES
CONTAINED HEREIN, IT IS AGREED AS FOLLOWS:**

1. Contingent upon DNRRTS CONTRACT

OXNARD and REPUBLIC agree that this AGREEMENT is contingent upon the final execution of the DNRRTS CONTRACT.

2. Performance by the Parties to This AGREEMENT

Upon the final execution of the DNRRTS CONTRACT, OXNARD and REPUBLIC shall immediately file a request for dismissal with prejudice of their respective Complaints and/or Cross-Complaints in the consolidated REPUBLIC LITIGATION and VALDOVINOS LITIGATION. It is the Parties' intent that these dismissals shall constitute a dismissal of the entire action with prejudice in the consolidated REPUBLIC LITIGATION and VALDOVINOS LITIGATION as provided for by Code of Civil Procedure § 581(b). The dismissals shall expressly state that they are subject to the Court's continuing jurisdiction pursuant to CCP § 664.6.

3. No Admission of Liability

It is understood and agreed to by the parties that this AGREEMENT is a compromise of disputed claims, and the payments are not to be construed as an admission of liability on the part of either party hereto.

4. Release of the CITY OF OXNARD and JOHN BRAY

For and in consideration of the covenants and promises contained herein, and the performance of the terms hereof, REPUBLIC and BLT do hereby dismiss, release and forever discharge OXNARD and JOHN BRAY of and from any and all rights, claims, charges, causes of action, demands or powers from whatever source derived, whether known or unknown, fixed or continued, which have arisen prior to the date of this AGREEMENT, or which may arise after the date of this AGREEMENT, which are based upon any act, omission, or condition in any way relating to or arising from the ACCIDENT, including, but not limited to, all claims, demands, or causes of action, asserted, or that could have been asserted, in the VALDOVINOS LITIGATION or REPUBLIC LITIGATION. This Release is intended by the parties hereto to be unconditional.

5. Release of REPUBLIC and BLT

For and in consideration of the covenants and promises contained herein, and the performance of the terms hereof, OXNARD does hereby dismiss, release and forever discharge REPUBLIC and BLT of and from any and all rights, claims, charges, causes of action, demands or powers from whatever source derived, whether known or unknown, fixed or continued, which have arisen prior to the date of this AGREEMENT, or which may arise after the date of this AGREEMENT, which are based upon any act, omission, or condition in any way relating to or arising from the ACCIDENT, including, but not limited to, all claims, demands, or causes of action, asserted, or that could have been asserted, in the VALDOVINOS LITIGATION or REPUBLIC LITIGATION.

6. Waiver of California Civil Code §1542

The parties hereto intend this AGREEMENT to extend to all claims, known or unknown, relating to the subject matter hereof. The parties after consultation with their independent counsel, waive all of its rights pursuant to the provisions of Section 1542 of the Civil Code of the State of California, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER RELEASE WITH THE DEBTOR.

7. Waiver of Right to Bring Action

The parties hereto agree that they will not bring, commence, maintain or prosecute, directly or indirectly, any action at law or any proceeding in equity, or any legal or administrative proceeding, or any claim for damages or other relief against each other, based in whole or in part on any claim, demand, cause of action, obligation or liability based upon, arising out of; or connected with any act, cans; matter or thing, which is released herein.

8. Each Party to Bear Own Costs

The parties hereto acknowledge and agree that each of them is to bear its own costs, expenses and. Attorney's fees arising out of or in connection with the negotiation, drafting and execution of this AGREEMENT, and all matters precedent arising out of or connected therewith. However, in the event any legal action is brought by any party hereto to enforce this AGREEMENT, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to all other relief to which the-party or those parties may be entitled.

9. Release Binds Agents and Successors

This AGREEMENT shall be binding upon each of the parties hereto and their

respective officers, agents, administrators, partners, successors, assigns, heirs, executors, trustees, attorneys, consultants and insurers, and any committee or arrangement or creditors organized with respect to the affairs of such party.

10. Change of Facts

It is understood by the parties that the facts pursuant to which this AGREEMENT is made may hereafter prove to be other than, or different from, the facts now known by them to be true. The parties, and each of them, expressly accept and assume the risk of the facts proving to be different, and agree that all the terms of this AGREEMENT shall be in all respects effective, and not subject to termination or rescission on account of any such difference in facts.

11. Governing Law

The effect, interpretation and enforcement of this AGREEMENT shall be governed by the substantive laws of the State of California; except for any statute or case authority pertaining to choice of law that would require the effect, interpretation or enforcement of this AGREEMENT to be subject to the law of another jurisdiction Any dispute or claim regarding or arising out of this AGREEMENT or its validity or any act which allegedly has or would violate any provision of this AGREEMENT, including any claim that all or part of the AGREEMENT is void, shall be venued in the Superior Court of Ventura County.

12. Enforcement

The Parties to this AGREEMENT hereby acknowledge, agree and stipulate that each has the right to enforce any provision of the AGREEMENT by filing any appropriate action, proceeding or motion, including without limitation, a motion pursuant to California Code of

Civil Procedure Section 664.6, in the appropriate law and motion department of the California Superior Court in and for the County of Ventura. The parties further acknowledge, agree and stipulate that the Court to which the REPUBLIC LITIGATION has been assigned shall retain jurisdiction over the parties to this AGREEMENT after it is dismissed solely to hear any motion brought pursuant to Section 664.6.

13. Severability

If any provision, or any part thereof, of this AGREEMENT shall for any reason be held to be invalid, unenforceable, or contrary to public policy or any law, the remainder of this AGREEMENT shall not be affected thereby.

14. Reliance Upon Own Judgment and Counsel

The parties to this AGREEMENT have been advised or have had the opportunity to be advised by their legal counsel with respect to the terms of this AGREEMENT and understand and acknowledge the significance and consequences of it. Because the parties hereto have each reviewed the terms of this AGREEMENT and have had the opportunity to be advised by legal counsel, the usual rule that the provisions of a document are to be construed against the drafter does not apply to the interpretation of the provisions of this AGREEMENT.

15. Agreement to Cooperate

The parties to this AGREEMENT agree to execute any additional documents or take any further actions which reasonably may be required of them or their respective counsel in order to consummate this AGREEMENT or otherwise to fulfill the intent of this AGREEMENT.

16. Entire Agreement

This AGREEMENT contains the entire understanding of the parties with regard to the matters herein set forth. There are no representations, warranties, agreements, arrangements, undertakings, oral or written, between the parties' hereto relating to the subject matter of this AGREEMENT which are not fully expressed herein.

17. Facsimile and Counterpart Execution

This AGREEMENT may be executed in several counter-parts, and all so executed shall constitute one AGREEMENT which shall be binding upon all the parties hereto, notwithstanding that all the parties' signatures do not appear on the same page. The parties may provide signatures by facsimile with the original to follow by regular mail.

18. Warranty of Signatory

The undersigned hereby represents and covenants that he or she is authorized to execute this AGREEMENT and that no other person or entity has or has had any interest in the claims relating to the subject matter hereof and that the parties have not sold, assigned, transferred, conveyed or otherwise disposed of any said claims or causes of action referred to herein.

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement and Mutual Release to be made effective by their duly authorized representatives, as executed on the dates indicated below.

DATED:

CONSOLIDATED DISPOSAL SERVICE, LLC

By: TERA

(Signature)

Tim m. Benter

(Print Name)

Its: Vice President

(Title)

DATED:

REPUBLIC SERVICES, INC.

By: TERA

(Signature)

Tim m. Benter

(Print Name)

Its: Vice President

(Title)

DATED:

CITY OF OXNARD

By: _____

(Signature) Dr. Thomas E. Holden, Mayor

APPROVED AS TO FORM

By: Alan Holmberg

(Signature) Alan Holmberg, City Attorney

ATTEST

By: _____

(Signature) Daniel Martinez, City Clerk

APPROVED
[Signature]
City Manager