

AGREEMENT

BETWEEN

THE CITY OF OXNARD

AND

**BLT ENTERPRISES OF OXNARD, INC.,
DBA REPUBLIC SERVICES OF OXNARD**

FOR

**THE MANAGEMENT AND OPERATION OF
A MATERIALS RECOVERY FACILITY AND TRANSFER STATION,**

TRANSFER OF WASTE FOR DISPOSAL,

AND

MARKETING OF RECOVERED MATERIALS

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RECITALS

267 This Agreement is made and entered into by and between the City of Oxnard (the "City"), a
268 political subdivision of the State of California, and BLT Enterprises of Oxnard, Inc. doing
269 business as (dba) Republic Services of Oxnard ("Contractor"), a California corporation, as of the
270 later of the date of execution by the City or the Contractor, as the case may be.

271

WITNESSETH:

272 WHEREAS, the State of California (the "State") has found and declared that the amount of solid
273 waste generated in California, coupled with diminishing landfill space and potential adverse
274 environmental impacts from landfilling, have created an urgent need for State and local
275 agencies to enact and implement an aggressive integrated waste management program.
276 Through enactment of the California Integrated Waste Management Act of 1989 the State has
277 directed the responsible state agency, and all local agencies, to promote recycling and to
278 maximize the use of feasible source reduction, recycling and composting options in order to
279 reduce the amount of solid waste that must be disposed of by land disposal; and

280 WHEREAS, on July 24, 1992, the City and Ventura Regional Sanitation District issued a Request
281 for Proposals for Regional Materials Recovery and Waste Transfer Facility seeking proposals
282 from qualified firms to design, construct and operate a transfer station and materials recovery
283 facility for processing curbside recycling, separated yard waste and source-separated
284 commercial programs, including a buyback/drop-off center, recyclable household hazardous
285 waste station, education center and wood/yard waste separation sorting capacity (the
286 "Facility", described more fully in Exhibit 1.01 Definitions) and to market the materials and
287 transfer mixed waste and the residue to a landfill for disposal; and

288 WHEREAS, the City evaluated all proposals and determined that BLT Enterprises of Oxnard, Inc
289 ("BLT") proposed to design, construct, manage and operate the Facility in a manner and on
290 terms which are in the best interest of City and its residents; and

291 WHEREAS, BLT assigned its rights and responsibilities under the ensuing Materials Recovery
292 Facility Design, Construction & Equipping Management and Operations Agreement by
293 exercising its right under the original Agreement to Republic Services of Oxnard ("Contractor"),
294 and taking into account the qualifications and experience of Contractor, the level of recycling to
295 which the Contractor is committed, and the cost of providing such services; and

296 WHEREAS, since 2000, the City and Permitted Users (as defined hereinafter) have been and
297 continue to be required by Applicable Law to divert at least fifty percent (50%) of solid waste
298 from landfills; and

299 WHEREAS, the City intends that this Agreement will contribute to providing the most cost-
300 efficient, best solid waste management services to its citizens; and

Republic Services Management, Operations, and Marketing Agreement

301 WHEREAS, the term of the original Materials Recovery Facility Design, Construction & Equipping
302 Management and Operations Agreement dated May 23, 1995 will expire on January 31, 2012;
303 and

304 WHEREAS, the execution and delivery of this Agreement by the City was duly approved by the
305 City Council on January 10, 2012;

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

ARTICLE 1. DEFINITIONS AND CONTRACT INTERPRETATION**310 1.01 Definitions**

311 As used herein, capitalized words shall have the meanings set forth in Exhibit 1.01, which shall
312 control in the event of any conflict with the definitions used in the recitals hereto.

313 1.02 Interpretation**314 a. Gender and Plurality**

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

318 b. Headings

319 Any captions or headings following the Exhibit, Section, subsection, paragraph and Article
320 numbers and preceding the operative text hereof shall be for convenience of reference only
321 and shall not in any way control or affect the scope, intent, meaning, construction,
322 interpretation or effect hereof.

323 c. Including and include

324 Or variations thereof, when used in this Agreement, shall mean "including, without limitation",
"including, but not limited to" and "including, at a minimum".

326 d. Prompt

327 Means as soon as practicable, but in no event less than two days, unless otherwise specified.

328 e. Day or "days"

329 Means calendar day or days.

330 f. Herein, "hereof", "hereunder"

331 Shall mean "in this Agreement", "of this Agreement", "under this Agreement", etc.;
332 "hereinbefore" and "hereinafter" shall mean before and after the date of this Agreement,
333 respectively.

334 g. The date hereof

335 Means the date this Agreement is made and entered into as provided above the preambles
336 hereof.

337 h. References

338 References to Sections and Articles refer to Sections and Articles hereof, unless specified
339 otherwise. References to Exhibits refer to Exhibits attached hereto.

340 **i. Examples**

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

343 **1.03 Integration**

344 This Agreement contains the entire agreement between the parties with respect to the
345 transactions contemplated hereby. This Agreement shall completely and fully supersede all
346 prior understandings and agreements between the Parties with respect to such transactions.

347 **1.04 Governing Law**

348 This Agreement shall be governed by, and construed and enforced in accordance with, the laws
349 of the State of California, County of Ventura and City of Oxnard, without giving effects to the
350 State's principles of conflicts of laws.

351 **1.05 Execution in Counterparts**

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

354 **1.06 Severability**

355 If any provision of this Agreement (or any portion of any provision of this Agreement) is held to
356 be unenforceable by any court of competent jurisdiction, the enforceability of any such
357 provision (or portion thereof) shall not affect the interpretation or enforceability of the balance
358 of such provision or any other provision in this Agreement.

359

ARTICLE 2. REPRESENTATIONS AND WARRANTIES

360

2.01 Of Contractor

361

The Contractor represents and warrants as of the date hereof, in accordance with Exhibit 2.01.

362

2.02 Of City

363

The City represents and warrants as of the date hereof, in accordance with Exhibit 2.02.

364 **ARTICLE 3. TERM OF AGREEMENT**

365 **3.01 Term**

366 This Agreement shall commence on February 1, 2012. The Service Agreement shall continue
367 through and including January 31, 2013, and may not be terminated by City or Contractor for
368 reasons of convenience or any other reason which is not based on a material breach or default
369 under the Agreement by the other party.

370 

371 This Agreement shall commence on February 1, 2012. The Service Agreement shall continue
372 through and including July 31, 2013, and may not be terminated by City or Contractor for
373 reasons of convenience or any other reason which is not based on a material breach or default
374 under the Agreement by the other party.

375 

376 This Agreement shall commence on February 1, 2012. The Service Agreement shall continue
377 through and including January 31, 2015, and may not be terminated by City or Contractor for
378 reasons of convenience or any other reason which is not based on a material breach or default
379 under the Agreement by the other party.

380

381 **3.02 City Right to Extend**

382 City may, at its sole discretion, extend the term of the Agreement in six (6) month increments
383 for not more than 18 months upon written notice to contractor delivered not less than six (6)
384 months prior to the termination of the Agreement.

385 **3.03 Survival of Certain Provisions**

386 All representations and warranties of the Parties herein, and all indemnifications provided for
387 herein, and any other rights and obligations of the Parties expressly stated to survive the
388 termination of this Agreement, shall survive such termination, including:

- 389
- Delivery of clean and functional Site and Facility upon termination of the Agreement in
390 accordance with Section 15.03; and
 - Payment of any amounts due and owing by either Party to the other Party at the time of
391 termination, including damages accrued in accordance with Sections 5.03 and 15.03 and
392 indemnification in accordance with Sections 11.02 and 11.03.
393

ARTICLE 4. GENERAL FACILITY OPERATION**4.01 Receiving and Operating Hours****a. Receiving Hours****(1) Transfer Station**

In accordance with Section 5.01, Contractor shall accept Permitted Waste Delivered by municipal and commercial Permitted Users from 5:30 a.m. to 5:00 p.m. Monday through Saturday, and by Selfhaulers from 5:30 a.m. to 5:00 p.m. Monday through Saturday during Pacific Daylight Savings Time and 5:30 a.m. to 5:00 p.m. during Pacific Standard Time, or such other times as the Parties may mutually agree ("**Transfer Station Receiving Hours**") except January 1, July 4, Thanksgiving and December 25 and holidays designated by the City from time to time ("**Holidays**").

(2) Buyback/Dropoff Center; Recyclable Household Hazardous Waste Area

In accordance with Sections 7.01 and 8.01, Contractor shall accept Source Separated Recyclable Materials and Recyclable Household Hazardous Waste, respectively, delivered by Selfhaulers at the Buyback/Dropoff Center and Recyclable Household Hazardous Waste Area, respectively, from 7:00 a.m. to 4:00 p.m. Monday through Saturday ("**Buyback/Dropoff Center Receiving Hours**"), except on Holidays and other days designated by the City from time to time.

(3) Visitor Education Center

Contractor shall provide the City access to the Visitor Education Center at all times for use by the City and Permitted Users. Upon request of the City or any Permitted User and reasonable notice (three business days, if possible) Contractor shall deliver visitor presentations on source reduction, recycling and solid waste management and provide tours of the Facility. Upon request of the City no less than one day in advance, Contractor shall permit the City to conduct presentations and tours of the Facility.

b. Operating Hours

Contractor shall operate and maintain the Facility at all times in accordance with Permits, except Holidays listed in subsection a above and during scheduled repair and maintenance. Contractor shall use Reasonable Business Efforts to perform repair and maintenance during non-operating hours. Contractor shall give the City one week's Notice of scheduled shutdowns for repair and maintenance. If Contractor cannot accept Permitted Waste or operate the Facility for any other reason, it shall give the City immediate telephonic notice followed by Notice, including the nature and expected duration of the shutdown and its impact on Contractor's Performance Obligations; provided such Notice shall not relieve the Contractor of its Performance Obligations hereunder, including payment of any damages.

428 **c. Overtime**

429 Upon request of the City no less than one day in advance, Contractor shall accept, Recover
430 and/or Process Permitted Waste at times other than those described in this Section above, and
431 City shall pay Contractor its Direct Costs and Indirect Costs of providing such additional service,
432 plus Profit.

433 **4.02 Weighing**434 **a. Installation, Operation and Maintenance**

435 The Contractor shall install and maintain State certified motor vehicle scales in accordance with
436 Applicable Law. All scales shall be linked to the centralized computer recording and billing
437 system, which shall be compatible with the City's systems and accounts and acceptable to the
438 City, for all incoming and outgoing materials. Upon City request, such information, including
439 weight and outgoing destination, as applicable, shall be downloaded daily and transmitted
440 electronically to the City computer system and recorded in form reasonably satisfactory to the
441 City.

442 Contractor's licensed weighmaster shall weigh at the Entry Scalehouse all materials entering
443 and exiting the Facility, any time of the day or night, including Permitted Waste Delivered in
444 trucks by Selfhaulers in amounts estimated to exceed one Ton; provided Contractor may
445 estimate the volume of Permitted Waste Delivered in cars and trailers by Selfhaulers based on
446 actual weight records obtained (1) in compliance with Applicable Law to determine diversion,
447 or (2) in any event, during a period of not less than two weeks each Contract Year. City may
448 observe such weighing operations. The City and its representatives shall have access to the
449 Entry Scalehouse at all times.

450 **b. Substitute Scales**

451 To the extent practicable, if any scale is inoperable, being tested or otherwise unavailable,
452 vehicles shall be weighed on the remaining operating scales. To the extent that all the scales
453 are inoperable, being tested, or otherwise unavailable, the Contractor shall substitute portable
454 scales until the permanent scales are replaced or repaired. The Contractor shall exercise due
455 diligence in replacing or repairing the inoperable scales. The Contractor shall weigh Source
456 Separated Yard Waste and Recovered Materials being transported from the Facility at an
457 available scale nearest the Site.

458 **c. Estimates**

459 Pending substitution of portable scales or during power outages, the Contractor shall estimate
460 the quantity of Permitted Waste being delivered to the Facility and Residue being transported
461 from the Facility, on the basis of delivery truck and transfer trailer volumes, tare weight, landfill
462 and/or processing and composting facility weight records, and data obtained through historical
463 information. These estimates shall take the place of actual weighing and shall be the basis for
464 records while scales are inoperable.

d. Testing

466 The Contractor shall test and calibrate all scales in accordance with Applicable Law. Prior to any
467 test, it shall provide at least five days' Notice thereof to the City, unless such test is conducted
468 by the State or other regulatory entity without advance notice to Contractor. Upon City
469 request, it shall provide the City with copies of test results.

470 The Contractor shall further test and calibrate any or all scales upon written request therefore
471 by the City, within three days of such request. If such test results indicate that the scale or
472 scales complied with Applicable Law, the City will reimburse the Contractor the Direct Costs of
473 such tests. If such test results indicate that the scale or scales did not comply with Applicable
474 Law, then all weight measurements recorded and Service Fees calculated, charged and paid, as
475 the case may be, from the date of such request, shall be adjusted and corrected consistent with
476 the results of such test.

477 Commercial collection vehicles and transfer trucks shall be assigned a number for weighing
478 purposes. Tare weights shall be checked at least annually or promptly upon City request.

e. Auditing

480 Contractor shall cause an independent certified public accountant to conduct an inventory of
481 Recovered Materials and audit of all weigh records at the direction of the City and provide the
482 City with a copy of such inventory and audit, certified by such accountant, within 120 days of
483 City request. City may observe such inventory and auditing procedures and confer with such
484 accountant.

f. Records

485 Contractor shall maintain weight records in accordance with Exhibit 5.04.
486

4.03 Maximum Diversion

488 Contractor shall use Reasonable Business Efforts to maximize Recovery and Processing of
489 Delivered Permitted Waste and Marketing and diversion of Recovered Materials from landfills,
490 in excess of its Performance Guaranties. Contractor acknowledges that this obligation is in
491 addition to and not derogation of its Performance Guaranties. Notwithstanding the foregoing,
492 Contractor shall not be liable for damages described in Section 14.01 if it is meeting its
493 Performance Guaranties.

4.04 Right to Enter and Inspect Facility

495 City shall have the right, but not the obligation, to observe and inspect Facility Operations. In
496 connection therewith, City and its representatives authorized by the City Manager shall have
497 the right to enter the Facility at any time and speak to any of Contractor's employees; such
498 representatives shall have access to the Facility at all times, provided that they shall comply
499 with the Contractor's reasonable safety and security rules and shall not interfere with the work
500 of the Contractor or its subcontractors. Upon City request, Contractor shall make specified
501 personnel available to accompany City employees on inspections. Contractor shall ensure that

502 its employees cooperate with the City and respond to the City's inquiries. Contractor shall
503 make operational and business records available to the City during Transfer Station Receiving
504 Hours upon City request; Contractor shall provide City copies thereof at City's request.

505 Notwithstanding anything in Section 4.04, City shall speak to the Contractor concerning
506 employees, operations or other matters involving the Facility solely through the Plant Manager
507 or his/her designated representatives, and shall not give directions to the Contractor's non-
508 supervisory personnel. Additionally, and notwithstanding anything in Section 4.04, or elsewhere
509 in the Agreement, no (a) internal profit and loss information; (b) information subject to third
510 party privacy rights (such as certain employee records); and (c) any legally privileged
511 documentation, shall be included in operational and business records to be made available to
512 the City.

513 **4.05 Security**

514 The Contractor shall maintain security at the Site during the Term, and if required by Applicable
515 Law or upon request of the City, shall staff at least one person at the Site at all times.

516 **4.06 Personnel and Subcontractors**

517 **a. Personnel**

518 The Contractor shall engage and train qualified and competent employees, including
519 managerial, supervisory, clerical, maintenance and operating personnel, in numbers necessary
520 and sufficient for Facility Operation and to perform Contractor's Performance Obligations. The
521 Contractor shall train staff to perform their work in a safe and efficient manner and ensure that
522 each staff person treats Permitted Users, Selfhauleders, City representatives and other members
523 of the public with courtesy.

524 City specifically acknowledges and agrees that all of Contractor's personnel presently working
525 at the Facility represent a sufficient number of employees; who are sufficiently qualified and
526 competent (at all management, supervisory, clerical, maintenance and operating levels) to
527 perform Contractor's Performance Obligations and that Contractor shall not be required to
528 maintain, increase or decrease the number or increase the quality or competence of any such
529 employees. Exhibit 11.01 attached hereto sets forth the minimum training qualifications for
530 compliance with the Agreement with respect to the Contractor's requirement to train qualified
531 and competent employees.

532 **b. Living Wage Standards**

533 Contractor shall pay its employees at the Facility a so-called "living wage" pursuant to the
534 requirements set forth in Exhibit 10.01 attached hereto. Contractor shall not be required to
535 increase compensation to any employee by reason of any increase in any new or different so-
536 called "living wage" (or comparable wage requirement) which the City may hereafter establish.

c. Subcontractors

538 Contractor shall notify City of any subcontractors which it is engaging for Unpermitted Waste
539 disposal services and services aggregating more than two hundred thousand dollars (\$200,000)
540 per Contract Year. Upon City approval thereof, which approval shall not be unreasonably
541 withheld, Contractor shall list such approved subcontractors on Exhibit 5.01. Contractor shall
542 amend such list to reflect substitutions or additions, with City approval. In an emergency, upon
543 immediate telephonic or other oral notice to the City followed promptly by Notice, the
544 Contractor may engage additional or substitute subcontractors for up to seven consecutive
545 days; provided, at the expiration of such seven days, engagement of such additional or
546 substitute subcontractors may be continued only if the City consents thereto. All
547 subcontractors shall be licensed as required under Applicable Law to perform their
548 subcontracted work and obtain and maintain a City business tax certificate. The Contractor shall
549 remain liable for the full and complete performance of its obligations hereunder. As used in
550 Section 4.06c, the term "subcontractors" shall not include or apply to Contractor's own
551 temporary employees.

4.07 Facility Throughput Guaranty

552 Contractor shall accept all Delivered Permitted Waste in accordance with Section 5.01. in
553 amounts at a minimum equal to 845 Tons per day (the "Daily Facility Throughput Guaranty")
554 and 197,775 Tons per Contract Year (the "Annual Facility Throughput Guaranty"). (The Daily
555 Facility Throughput Guaranty and Annual Facility Throughput Guaranty are together referred to
556 as the "Facility Throughput Guaranty").

4.08 Repair and Maintenance; Replacement**a. Repair and Maintenance**

559 The Contractor shall maintain the Facility and the Site in good working order and repair,
560 including landscape, Building and Equipment maintenance and repair; cleaning and painting the
561 Facility; street sweeping; maintaining spare parts inventory; and generally performing periodic
562 maintenance in accordance with the Operations and Maintenance Manual. Contractor shall
563 report thereon in accordance with Exhibit 5.04. In anticipation of emergency operation during
564 Equipment failure and/or power outages, Contractor shall maintain more than one loader on
565 Site for transfer operations, together with a standby generator. Contractor shall maintain the
566 aesthetic appearance of the Facility and Site in accordance with Section 4.10. Notwithstanding
567 anything in Section 4.08, or elsewhere in this Agreement, Contractor shall not be required to
568 restore any item or portion of the Facility which is beyond its useful life at the termination of
569 this Agreement.
570

b. Replacements

571 Contractor may request the City (1) to reimburse Contractor for making major repairs to the
572 Building and replacements of Equipment listed in the attachment to Exhibit 5.03 in accordance
573 with the Direct Costs and useful lives therein, or other emergencies and unforeseen events, by
574 delivering an invoice and warranties in accordance with Exhibit 5.03 or (2) if such repairs and
575

576 replacements must be done pursuant to public bidding in accordance with Applicable Law, to
577 make purchases therefore. Within thirty days following receipt of such invoice and warranties,
578 the City shall pay Contractor the Direct Costs thereof; provided that if such repairs and
579 replacements occur earlier than scheduled in Exhibit 5.03, and the Contractor cannot make the
580 representation described in Exhibit 5.03 then the City may prorate the amounts provided in
581 Exhibit 5.03 to reflect the earlier payment.

582 **4.09 Safety**

583 Contractor acknowledges that worker safety and fire prevention is of critical importance to the
584 City, and shall conduct Facility Operations in a safe manner, in accordance with Applicable Law,
585 requirements of insurance carried pursuant to Article 11, and standard practices in the waste
586 management/materials recovery industry. Contractor will require that all pickers wear dust
587 masks, steel-toed boots, safety glasses and gloves. Contractor will train all laborers in safety
588 procedures in accordance with Applicable Law. Contractor shall direct traffic upon entry to the
589 Site so that it travels, queues, unloads and exits in a safe manner. Contractor shall provide and
590 maintain all necessary and appropriate fire control equipment, including an alarmed sprinkler
591 system, fire hoses and extinguishers, all as provided in the Operations and Maintenance
592 Manual. City acknowledges and agrees that its representatives will be trained in appropriate
593 safety matters and that such representatives will follow any Contractor safety instructions.

594 **4.10 Nuisances**

595 **a. Litter and Vectors**

596 Contractor shall maintain the Facility and Site in a neat and orderly condition, unfavorable to
597 rodents and insects, including cleanup of litter and debris on Site and along roads near the Site,
598 at a minimum, daily, or as frequently as necessary to comply with this Section. Contractor will
599 maintain the existing rodent and insect management program and make improvements as
600 necessary to minimize vector impact, including contracting with a professional pest control
601 company to inspect the Facility on a periodic basis. In the event of apparent vector activity,
602 within twenty-four hours of City direction, Contractor shall implement vector control measures
603 sufficient to remedy the vector nuisance.

604 **b. Odor**

605 To minimize odors, Contractor will direct all Permitted Users and Selfhaulers to discharge
606 Permitted Waste and will conduct all Recovery and Processing inside the Building. Contractor
607 will load all Mixed Municipal Waste having potential for causing odor into transfer trailers
608 promptly after receipt. Contractor will not allow any waste to remain on the tipping floor
609 longer than 24 hours or on Site for more than 48 hours. Contractor will use Reasonable
610 Business Efforts to store Recovered Materials on Site no longer than one month.

611 **c. Noise**

612 Contractor shall sound-proof and muffle all on-Site vehicles operated by the Contractor
613 (including forklifts and loaders) and equipment (including baler and conveyors). Contractor will

615 operate safety back-up bells at minimum levels required by Applicable Law, including the
616 California Occupational Safety and Health Act.

616 **d. Dust**

617 Contractor shall diligently suppress dust as required by Applicable Law to protect the health
618 and safety of Permitted Users and Contractor's employees.

619 **4.11 Changes in Scope of Facility Operations**

620 City may direct Contractor to implement Change Orders with respect to Facility Operations in
621 accordance with Section 21.01a, and Contractor may propose such Change Orders in
622 accordance with Section 21.01b.

623 **4.12 Records and Reporting Requirements**

624 **a. Records Maintenance**

625 Contractor shall keep daily accurate and complete records of Facility Operations with respect to
626 the items listed in Exhibit 5.03, in paper, electronic, magnetic or other media in sufficient detail
627 to allow the Contractor to calculate and City to corroborate the Service Fee, any damages and
628 other amounts hereunder and to determine compliance with the provisions hereof. All
629 computations, records, files, plans, correspondence, reports, drawings, designs, data and
630 photographs prepared by or possessed by Contractor relating to Facility Operations shall be the
631 property of the City and upon City request therefore, City shall be entitled to immediate
632 possession thereof, provided, Contractor may retain copies of such records and other materials.
633 Contractor shall furnish such records and other materials to the City no later than ten days after
634 request therefore. Contractor shall preserve such records and other materials for a period of
635 five years; provided, it shall keep videotapes for a period no less than one year. The
636 documents to be maintained by Contractor pursuant to Section 4.12 shall not include any of
637 Contractor's internal documents, such as (but not limited to) employee records; any
638 confidential information concerning Contractor; or any communications which are legally
639 privileged (such as, by way of example only, privileged by reason of the attorney-client
640 confidentiality privilege).

641 **b. Monthly Reports**

642 By the Service Fee Invoice Date, Contractor shall submit to the City and Permitted Users a
643 Facility Operations report containing the information listed in Exhibit 5.05. The Contractor shall
644 supply the City with additional information and documentation, including sales invoices and
645 contracts, within thirty days of City's request therefore, describing the information requested
646 with reasonable specificity. City shall notify Contractor within thirty days after receipt of such
647 report or within thirty days after receipt of any additional requested information, of any dispute
648 as to the accuracy of the report. The obligations of Contractor under Section 4.12 shall
649 automatically terminate upon termination of the Agreement.

650 4.13 Updated Operations and Maintenance Manual

651 On or before July 1 of each year Contractor shall review the current Operations and
652 Maintenance Manual and revise it to reflect any changes in Facility Operation procedures that
653 occurred during the previous year and submit a copy thereof to the City. The updated manual
654 shall conform to the requirements of Exhibit 4.01. If there are no changes to be made, the
655 Contractor will perform in accordance with the most recently approved Operations and
656 Maintenance Manual.

657 4.14 Facility Operation

658 Contractor covenants to comply with all Performance Guaranties throughout the Term and to
659 perform its Performance Obligations with respect to Facility Operation hereunder in
660 accordance with accepted practice for comparable facilities, sound management and
661 operations practice, the Operations and Maintenance Manual, Permits, Applicable Law, the
662 provisions hereof, and covenants, conditions and restrictions pertaining to the Site.

663 The Contractor shall not use or permit the use of the Facility for any purpose other than those
664 contemplated by this Agreement, including waste management activities unrelated to
665 Contractor's Performance Obligations to the City or Permitted Users hereunder. Contractor
666 shall not accept, transfer, Recover or Process any materials other than Permitted Waste and
667 Recovered Materials approved by the City hereunder.

668 4.15 Permitted Users**669 a. Determination**

670 City shall give Contractor a list of Permitted Users identifying, where reasonably possible,
671 particular vehicles, including municipal or commercial haulers' collection vehicles. Contractor
672 shall require Permitted Users to identify themselves by means mutually acceptable to the
673 Parties. Contractor may rely upon such identification. Contractor shall have sole responsibility
674 for determining if any Person attempting a Delivery to the Facility is a Permitted User, in
675 accordance with such list.

676 b. Contractor Rules and Regulations

677 The Contractor shall have the right to establish reasonable rules and operating procedures in
678 connection with the use of the Facility by Permitted Users. Such rules and regulations shall be
679 subject to the reasonable approval of the City. Contractor shall prominently post such rules.

680 c. Contractor Denial of Service

681 The Contractor shall have the right to refuse to provide service to any Permitted User at the
682 Facility if, (1) in the reasonable judgment of the Contractor, providing service to such Permitted
683 User would result in a risk of loss or liability to the Contractor, (2) such Permitted User fails to
684 comply with Applicable Law or the rules and regulations imposed by the Contractor in
685 accordance with subsection b above, or (3) such Permitted User has previously delivered, or
686 attempted to deliver, Unpermitted Waste to the Facility. In the event that the Contractor

refuses to provide service pursuant to this subsection, it shall immediately Notify the City of such denial and the reasons therefore.

d. Additional Permitted Users

Contractor may negotiate with other Persons the terms of Excess Capacity Arrangements for Facility service between such other Persons and the City, in accordance with guidelines established by the City and in consultation with the City, including: service fees amount, invoicing and payment; queuing priorities; insurance requirements; Permitted User and vehicle identification; record keeping and reporting requirements (including attributable Residue and diversion); and Permitted Waste Delivery characteristics. Parties shall consider the impact of Permitted Waste type (e.g. Mixed Municipal Waste Delivered for transfer as opposed to Source Separated Recyclable Materials Delivered for Recovery and Processing) and volume on this Agreement, sharing of Recovered Material Profits and Recovered Materials Losses in accordance with Section 9.07, the Service Fee (which is based on blended transfer and Recovery services), Facility Base Tonnage on which the Base Service Fee is premised, Residue and disposal fees, Performance Guaranties, and utility use (which City pays directly). Contractor acknowledges that the City may require that service fees under such Excess Capacity Arrangements reflect City's costs, including the Service Fee (particularly the Base Service Fees and Excess Service Fees), capital financing of the Facility and debt service on Municipal Obligations, funding the replacement reserve, and accelerated repair and replacement due to handling such excess capacity. Contractor shall disclose to City any and all fees that it will receive from any Permitted User for collection, transportation, tipping Permitted Waste at the Facility, or any other service.

Such Excess Capacity Arrangements shall be subject to final approval and execution, if in the form of contracts or agreements, by the City. Prior to commencing any such negotiations, Contractor shall reach agreement with the City as to Contractor's compensation for securing such Excess Capacity Arrangements. Permitted Waste Delivered by Permitted Users shall be treated in the same manner as Permitted Waste Delivered by the City for purposes of calculating the Service Fee unless provided differently by the Parties.

4.16 Patents, Trademarks, Licenses

The Contractor and its affiliates shall hold or possess a right to use all patents, rights to patents, trademarks, copyrights and licenses, as the case may be ("Proprietary Property") of any equipment or software not owned by the City necessary for the performance by the Contractor of its Performance Obligations and the transactions contemplated by this Agreement, and shall ensure that the City shall own, hold or possess a right to use such Proprietary Property for all Equipment, Facility furnishings and fixtures owned by the City. As of the date hereof, the Contractor represents that it does not know any material conflict with the rights of others regarding Proprietary Property.

724 **4.17 Permitted User Tipping Fees**

725 **a. City Establishes and Charges Tipping Fees**

726 Contractor acknowledges that in, conjunction with Contractor's negotiation of Excess Capacity
727 Arrangements, the City may establish, charge and collect fees from Permitted Users for use of
728 the Facility.

729 **b. Selfhaulers**

730 Upon Delivery by Selfhaulers of Permitted Waste to the Facility, Contractor shall collect cash tip
731 fees established by the City, on behalf of the City.

732 **c. Other Permitted Users**

733 Upon Delivery by Permitted Users (other than Selfhaulers) which must have established
734 accounts with the City, Contractor shall debit their accounts and provide the City with billing
735 and collection services therefore and accounting thereof.

736 **d. Procedures**

737 The Contractor shall provide billing and collection services for Excess Capacity Arrangement
738 fees, tipping fees, and other moneys paid by Permitted Users and Selfhaulers. The Contractor
739 shall deliver all cash and checks daily to the City on days City offices are open for business,
740 unless otherwise requested by the City. City and Contractor shall establish a mutually
741 agreeable procedure for (1) safekeeping Selfhaulers' cash fees prior to delivery, manner and
742 timing of delivery thereof to City and accounting thereof, as well as for (2) billing other
743 Permitted Users, collecting fees therefrom, notifying City of delinquencies and/or refusing
744 service thereto, and accounting thereof, all taking into consideration particularly the existing
745 procedure of the City's Finance Department and Treasurer. Contractor's cost of collecting and
746 billing shall be included in the Service Fee, except for any costs of providing for transportation
747 security of checks or cash by a third party, which costs shall be subject to approval by the City
748 and upon such approval, paid directly by the City.

749 Prior to any increase, however, City shall confer with Contractor in order to reach a consensus
750 on the charge which the City may establish under Section 4.17.

751 **4.18 Utility Costs**

752 City shall pay the costs of potable water (and wastewater or sewerage fees related thereto),
753 natural gas, if any, and electricity for the Facility provided that the Facility meets the utility
754 consumption guaranties in Exhibit 5.06. Contractor shall use Reasonable Business Efforts to
755 conserve utility consumption and shall cause such utility bills to be sent directly to the City. If
756 the Facility does not meet such guaranties, the City will pay such costs up to the guaranteed
757 consumption and Contractor shall pay such costs in excess of the guaranteed consumption.

758 **4.19 Prohibition of Unsolicited Privatization Proposals.**

759 The Contractor, its officers, directors, management employees, agents and representatives
760 shall not verbally or in writing submit to the City formal or informal unsolicited proposals for
761 the privatization of municipal solid waste collection services in the City.

762 **ARTICLE 5. TRANSFER STATION**763 **5.01 Acceptance of Permitted Waste**764 **a. Acceptance**

765 Contractor shall accept at the Transfer Station, Permitted Waste Delivered by Permitted Users
766 and Selfhaulers during Transfer Station Receiving Hours, subject to rejection rights in
767 subsection b. Pursuant to the provisions of any Excess Capacity Arrangements, the City shall
768 require the Permitted Users to Deliver, or cause to be Delivered, materials which comprise
769 Permitted Waste. However, nothing in this Agreement shall be construed to mean that the City
770 guaranties that Delivered materials shall comprise Permitted Waste or that City guaranties to
771 Deliver or cause to be Delivered any amount of Permitted Waste. The Contractor's
772 Performance Guaranties shall not be dependent upon characterization of Permitted Waste
773 except for the Materials Recovery Guaranty.

774 Contractor shall not discriminate in the use of the Facility on account of race, color, national
775 origin, ancestry, religion, sex, marital status or disability.

776 **b. Rejection**

777 Notwithstanding the foregoing subsection a, the Contractor may refuse to accept (1)
778 Unpermitted Waste, and also (2) Permitted Waste which is:

779 (1) From Persons Other Than Permitted Users

780 Delivered by Persons which are not Permitted Users;

781 (2) Outside Receiving Hours

782 Delivered at times other than Transfer Station Receiving Hours and/or Buyback/Dropoff Center
783 Receiving Hours, as the case may be, or at any other mutually agreed upon times;

784 (3) Above Daily Throughput Guaranty

785 Delivered in excess of an amount equal to the Daily Throughput Guaranty or 1620 Tons per 48
786 hours on the date hereof if the City directs Contractor to increase the Facility Throughput
787 Guaranty; and

788 (4) Due to Uncontrollable Circumstances

789 If the Facility is partially or completely closed due to Uncontrollable Circumstances.

790 "Delivered" when used with respect to Permitted Waste, means Permitted Waste delivered to
791 the Facility which Contractor may not reject for such enumerated reasons.

792 If the Contractor wrongfully rejects Permitted Waste Delivered in accordance with subsection a
793 above, it shall pay damages in accordance with Section 14.01.

794 **c. Screening and Removal of Unpermitted Waste**

795 The City shall not knowingly Deliver Unpermitted Waste to the Facility.

796 The Contractor shall not knowingly accept Unpermitted Waste at the Facility. Contractor shall
797 implement the Unpermitted Waste exclusion program attached as Exhibit 6.01 in accordance
798 with Permits and Applicable Law, including video camera filming of disposal on the tipping floor
799 with record of the date and time thereof, in order to attempt to prevent acceptance of
800 Unpermitted Waste at the Facility.

801 The Contractor may inspect all vehicles entering the Facility and all materials therein, before
802 and after unloading, and shall inspect all vehicles in accordance with the exclusion program.
803 Contractor shall reject any Unpermitted Waste discovered in vehicles or during tipping thereof
804 and require that all Persons remove such Unpermitted Waste from their vehicle and from the
805 Facility. If the Contractor reasonably determines that it is impracticable to remove such items,
806 then the Contractor may deem the entire load to comprise Unpermitted Waste and shall have
807 the right to refuse to accept the entire load.

808 **d. Inadvertently Accepted Unpermitted Waste**

809 If the Contractor inadvertently receives delivery of any Unpermitted Waste (including
810 Hazardous Waste other than Recyclable Household Hazardous Waste), it shall classify, treat
811 and/or transport or arrange for the transportation of such Unpermitted Waste from the Facility
812 to a disposal facility designated by the City in accordance with Applicable Law, as necessary.
813 Neither the Contractor nor the City shall countenance or knowingly permit the delivery of
814 Hazardous Waste to the Facility or Site or the storage of Hazardous Waste at the Facility or Site,
815 other than Recyclable Household Hazardous Waste.

816 The Contractor shall pay all costs and expenses incurred in the handling, transportation and
817 disposal incurred by third parties of such Unpermitted Waste up to \$37,403.46 per Contract
818 Year, and the City shall reimburse Contractor for such costs and expenses in excess of \$25,000
819 together with monthly payment of the Service Fee in accordance with Section 13.07.
820 Contractor shall use Reasonable Business Efforts to minimize such costs. The City and the
821 Contractor shall use their best efforts to identify any Person responsible for delivery to or
822 abandonment at the Facility of any Unpermitted Waste and their Reasonable Business Efforts
823 to require such Person to bear all costs and liabilities associated with the handling thereof. The
824 City and the Contractor shall take all reasonable steps necessary to seek enforcement of
825 Applicable Law regarding such delivery.

826 **e. Permitted User Comments**

827 Contractor shall keep a record of comments made and concerns raised by Permitted Users and
828 use Reasonable Business Efforts to address such comments and concerns.

829 **5.02 Turnaround Time of Waste Collection Vehicles**

830 Contractor shall ensure that vehicles Delivering Permitted Waste do not queue on the street.

831 Contractor guaranties (the "**Vehicle Turnaround Guaranty**") that each Permitted Users' waste
832 collection vehicle Delivering Permitted Waste is able to unload (1) within fifteen minutes of
833 departing the Entry Scalehouse, averaged over a two week period and (2) in no event greater
834 than thirty minutes, absent vehicle breakdown or driver negligence, except that such vehicles
835 delivering paper and commingled containers in bifurcated compartments shall be able to
836 unload both bins within thirty minutes thereof.

837 The Parties acknowledge that consistent, efficient Facility Operation is of utmost importance to
838 the Permitted Users and Selfhaulers; waste collection vehicles' delays in unloading at the
839 Facility increase the Permitted Users' hauling costs; and the City has considered and relied on
840 Contractor's representations as to its quality of service commitment in entering into this
841 Agreement. The Parties further recognize that quantified standards of performance are
842 necessary and appropriate to ensure consistent and reliable service. The Parties further
843 recognize that if Contractor fails to meet the Vehicle Turnaround Guaranty, Permitted Users
844 and their residents will suffer damages and that it is and will be impracticable and extremely
845 difficult to ascertain and determine the exact amount of such damages. Therefore, the Parties
846 agree that the following liquidated damages represent a reasonable estimate of the amount of
847 such damages, considering all of the circumstances existing on the date hereto, including the
848 relationship of the sums to the range of harm to Permitted Users that reasonably could be
849 anticipated and anticipation that proof of actual damages would be costly or inconvenient. In
850 signing this Agreement, each Party specifically confirms the accuracy of the statements made
851 above and the fact that each Party had ample opportunity to consult with legal counsel and
852 obtain an explanation of this liquidated damage provision at the time that this Agreement was
853 made.

854 If upon Notice of the City that Contractor is in breach of the Vehicle Turnaround Guaranty,
855 Contractor does not cure such breach within fourteen days of such Notice, beginning on such
856 fourteenth day Contractor agrees to pay (as liquidated damages and not as a penalty) fourteen
857 and 96/100 dollars (\$14.96) for each Permitted Users' vehicle that cannot timely unload and
858 depart in accordance with the Vehicle Turnaround Guaranty and further agrees that these
859 amounts may be deducted by City from payments to Contractor by City in accordance with
860 Section 13.09.

861 **5.03 Transfer of Permitted Waste and Residue**

862 Contractor shall transfer Delivered Permitted Waste from the tipping floor of the Transfer
863 Station and Residue from the MRF to transfer trucks, in accordance with the Facility
864 Throughput Guaranty, using Reasonable Business Efforts to load transfer trucks to the
865 maximum weights allowed under Applicable Law.

866

ARTICLE 6. MRF OPERATIONS

867

6.01 Recovery and Processing of Recovered Materials

868

a. Materials Recovery Guaranty

869 Contractor guaranties to annually Recover and Process Recovered Materials from Delivered
870 Permitted Waste in amounts at least equal to fifteen percent (15%) by weight of such Permitted
871 Waste up to the lesser of (i) the number of Tons Delivered that Contract Year up to a maximum
872 of 179,795 Tons, or (ii) the sum of Daily Maximum MRF Tonnage delivered each day during such
873 Contract Year, where "Daily Maximum MRF Tonnage" on any day shall equal the lesser of (x)
874 the actual number of Tons Delivered such day or (y) 768 Tons (the "Materials Recovery
875 Guaranty"). If the City directs the Contractor to increase the Facility Throughput Guaranty,
876 such limits shall be increased in accordance with Exhibit 5.02.

877

b. Calculation of Guaranty

878 Contractor will calculate the Materials Recovery Guaranty in accordance with Exhibit 7.01
879 monthly and report thereon in accordance with Exhibit 5.05.

880

c. Standards of Performance

881 City and Contractor agree that the other party's respective performance under the Agreement
882 is, at this time, acceptable and sufficient performance as required under the Agreement, or
883 otherwise.

884

6.02 MRF Throughput

885

a. Source Separated Recyclable Materials Throughput

886 Contractor shall accept at a minimum 7,827 Tons per Contract Year of Delivered Source
887 Separated Recyclable Materials and Recover and Process Recovered Materials there from. If
888 City directs Contractor to increase the Facility Throughput Guaranty, such Tonnage shall be
889 adjusted in accordance with Exhibit 5.02.

890

b. Recyclable Waste and Recyclable Rich Waste Throughput

891 Contractor shall accept at a minimum an aggregate 55,600 Tons per Contract Year of Delivered
892 Recyclable Waste and Recyclable Rich Waste and Recover and Process Recovered Materials
893 there from. If City directs Contractor to increase the Facility Throughput Guaranty, such
894 Tonnage shall be adjusted in accordance with Exhibit 5.02.

895

6.03 Processing of Recovered Materials: Recovered Materials Quality Guaranty

896

897 Contractor will Recover, at a minimum, the Recyclable Materials in accordance with standard
898 recycling industry practices, including sorting paper and metal by type and glass by color. It will
899 use a baler of standard industry size. Contractor will periodically inspect sorters' work and

900 bales and will continually train sorters in material handling and processing to avoid picking
901 contaminated materials.

902 Contractor shall Process all Recovered Materials for Marketing. Recovered Materials shall at a
903 minimum meet the product specifications attached as Exhibit 7.02 (the "**Recovered Materials**
904 **Quality Guaranty**"). Rejection of any shipment of Recovered Material by the purchasers
905 thereof and consequent disposal thereof shall constitute a breach of the Recovered Materials
906 Quality Guaranty; the weight thereof shall not be included in calculations of the Materials
907 Recovery Guaranty, and Contractor shall be liable to pay City the compensatory damages
908 described in Section 14.01, (2) excess residue haul costs, (4) excess residue disposal fee, (5) lost
909 recovered material revenues and (6) consequential fines, as applicable.

910 ARTICLE 7. BUYBACK/DROPOFF CENTER**911 7.01 Materials Accepted**

912 Contractor will accept Recyclable Materials Delivered to the Buyback/Dropoff Center by
913 Selfhaulers during Buyback/Dropoff Center Receiving Hours and Recover, Process and Market
914 such materials; provided, the Contractor may add or subtract materials from Recyclable
915 Materials with City consent in accordance with Section 21.01b, and the City may direct the
916 Contractor to add or subtract materials from Recyclable Materials in accordance with Section
917 21.01a.

918 Contractor shall accept all white goods. Those which have chlorinated flouro-carbons ("CFCs")
919 left intact shall be set aside and shall then have CFCs removed if the white goods are being
920 Marketed for their scrap value. All handling shall be done in accordance with Permits and
921 Applicable Law.

922 7.02 Prices

923 Contractor shall establish and post at the Buyback/Dropoff Center prices, if any, to be paid for
924 the Recyclable Materials, subject to City approval, and shall pay such prices to haulers upon
925 Delivery thereof. Such payments comprise Marketing Costs in accordance with Section 9.06.

926 7.03 Non-City Buyback Materials**927 a. Acceptance by the Contractor; Fee Payable by the City**

928 The Contractor will use Reasonable Business Efforts to accept, process and market Non-City
929 Buyback Materials at the Facility to the extent that the Facility has the excess capacity to accept
930 such materials from time to time. As compensation for the receipt and processing of Non-City
931 Buyback Materials, the City shall pay the Contractor an amount equal to \$52.36 per ton of Non-
932 City Buyback Materials (stated in dollars and subject to escalation from the date pursuant to
933 Section 20.01). The amount payable by the City pursuant to this Section shall be paid as an
934 additional component of the Service Fee pursuant to Article 13 hereof.

935 b. Special Provisions Relating to Non-City Buyback Materials:

- 936 1. Diversion attributable to Non-City Buyback Materials shall be counted for purposes of
937 determining the Contractor's compliance with the materials Recovery Guaranty pursuant to
938 Section 6.01.
- 939 2. Tons of Non-City Buyback Materials shall be counted for purposes of calculating MRF
940 Throughput pursuant to Section 6.02.
- 941 3. Tons of Recovered Materials attributable to Non-City Buyback Materials shall not be
942 counted for purposes of determining the Excess Diversion Bonus pursuant to Section 13.05
943 but shall be counted for purposes of calculating the Recovered Materials Haul Fee pursuant
944 to Section 10.01c.

- 945 4. The \$52.36 per ton fee (as escalated in accordance herewith) paid by the City pursuant to
946 Section 7.03a shall constitute "Marketing Costs" for purposes of Section 9.06.
- 947 5. Non-City Buyback Materials shall not be considered for purposes of calculating the Excess
948 Tonnage Fee pursuant to Section 13.03.

949
950

**ARTICLE 8. RECYCLABLE HOUSEHOLD HAZARDOUS WASTE
COLLECTION AREA**

951

8.01 Recyclable Household Hazardous Waste Collection Area

952 Contractor will accept Recyclable Household Hazardous Waste in amounts up to and including
953 500 pounds daily, delivered to the Recyclable Household Hazardous Waste Collection Area,
954 which shall be adjacent to the Buyback/Dropoff Center, by Selfhaulers during Buyback/Dropoff
955 Center Receiving Hours and Recover, Process and Market such Recyclable Household
956 Hazardous Waste provided, the Contractor may add or subtract materials from the definition of
957 Household Hazardous Waste with City consent in accordance with Section 21.01b, and the City
958 may direct the Contractor to add or subtract materials from such definition in accordance with
959 Section 21.01a.

960 Contractor will provide for recycling or reuse of such materials at permitted facilities other than
961 landfills, through licensed contractors, in accordance with Applicable Law, and will not dispose
962 of such materials without consultation with the City. City will pay the Direct Costs of
963 transportation and disposal for such materials.

964 **ARTICLE 9. MARKETING**

965 **9.01 Marketing Plan**

966 **a. Contents and Preliminary**

967 An outline of the required contents of the Marketing Plan is attached as Exhibit 8.01.

968 **b. Annual Update**

969 Contractor shall review the Marketing Plan previously agreed to by City and Contractor and
970 revise it to reflect any changes in Recovered Materials market and Facility Operations, including
971 the Materials Recovery Guaranty and Recovered Materials Quality Guaranty.

972 **c. City Comment**

973 The City may, but need not, comment on Marketing Plans. Notwithstanding any such review
974 and comment by the City, Marketing shall remain the responsibility of Contractor. Neither the
975 review nor comment upon, nor the failure of the City to comment upon, the Marketing Plan
976 shall (1) relieve Contractor of any of its obligations and responsibilities hereunder or impose
977 any liability upon the City, nor (2) be deemed to be a representation by the City that
978 Contractor's Marketing in accordance with the Marketing Plan signifies that the Contractor has
979 complied with all its Marketing obligations hereunder or under Applicable Law.

980 **9.02 Marketing Obligations**

981 Contractor shall use Reasonable Business Efforts to operate the Facility for Recovery and
982 Processing of additional materials as new recycling markets, processes and technologies
983 develop. Contractor may propose Change Orders in accordance with Section 21.01b to
984 implement such adaptations. Contractor's Marketing obligations shall include:

985 **a. Market promotion**

986 Advertising and promoting the purchase of Recovered Materials.

987 **b. Storage**

988 Storing all Recovered Materials indoors, on or off-Site, to protect against theft, deterioration,
989 contamination or other loss or damage.

990 **c. Insurance**

991 Insuring all Recovered Materials on-Site and during shipment prior to transfer of title to
992 purchasers thereof, against fire, theft and other casualty losses in accordance with Section
993 11.01.

994 **d. Packaging and Transportation**

995 Properly packaging Recovered Materials in accordance with purchasers' requirements and
996 standard practice in the recycling industry, and arranging for transportation and delivery to

997 purchasers unless the terms of sale require the purchaser to arrange for transportation and
998 delivery.

999 **e. Sales**

1000 Arranging for the sale of Recovered Materials at competitive market prices, foreign or
1001 domestic.

1002 (1) Efforts

1003 Contractor shall exert Reasonable Business Efforts to sell Recovered Materials in accordance
1004 with this Agreement and to aggregate Recovered Materials with any brokerage agreements it
1005 might otherwise have, in order to maximize purchase prices and/or assure a stable market.

1006 Contractor shall obtain purchase agreements that are assignable to the City upon termination
1007 of this Agreement, unless otherwise approved by the City. Contractor shall provide the City
1008 with copies of Recovered Materials sales invoices together with the Marketing report required
1009 by Section 4.12 and Exhibit 5.05. Payments for Recovered Materials shall be made payable to
1010 or to the order of the City and be mailed to the Contractor for accounting. Contractor shall
1011 record payments and deliver checks therefore to the City daily when the City is open to conduct
1012 business. City and Contractor shall establish a mutually agreeable procedure for safekeeping
1013 cash or checks prior to delivery, manner and timing of delivery thereof to City and accounting
1014 thereof, as well as for notifying City of delinquencies and accounting thereof, all taking into
1015 consideration particularly the existing procedure of the City's Finance Department and
1016 Treasurer.

1017 (2) City-directed Sale or Placement

1018 Upon direction of the City, Contractor shall sell or otherwise place Recovered Materials to local
1019 purchasers, including Persons located in the Ventura County Recycling Market Development
1020 Zone. In the event Contractor believes that such sale or placement yields less revenues than a
1021 sale that Contractor would have arranged, it may submit evidence of such price differential to
1022 the City, including bids made for the same materials with the same specifications during the
1023 past four weeks or quotations from Institute for Scrap Recycling Industries, Inc. (ISRI), Scrap
1024 Specifications Circular (for such year), Guidelines for Ferrous Scrap, Nonferrous Scrap, Paper
1025 Stock, and Plastic Scrap and Anchor Glass Container, Technical Series Standards #700 010 01 for
1026 Purchased Unprocessed Cullet, or in the event such publications are no longer published,
1027 similar publications recognized by the City. The City shall review such pricing information, and
1028 upon demonstration of such price differential shall compensate Contractor for the difference
1029 between the revenue share it would have received and the revenue share, if any, it actually
1030 received, in accordance with Section 9.06 as part of Marketing Costs.

1031 For example, if Contractor demonstrates that it could have sold such Recovered Material for
1032 \$15/Ton minus \$3/Ton transportation cost, resulting in net revenue of \$12 divided equally
1033 between the City (\$6) and the Contractor (\$6); and if the City directs the sale of such Recovered
1034 Material for \$5/Ton minus \$1/Ton transportation cost, resulting in net revenue of \$4 divided

1035 equally between the City (\$2) and the Contractor (\$2), City shall compensate Contractor \$4 (\$6
1036 - \$2)/Ton.

1037 (3) City Review

1038 Contractor shall allow City to review any transaction with respect to sale or placement of
1039 Recovered Materials, including discussions with any purchaser or taker of Recovered Materials,
1040 and any related party transactions.

1041 **f. Weighing**

1042 Delivering Recovered Materials to the Entry Scalehouse for weighing by the City during Transfer
1043 Station Receiving Hours prior to shipment and by the Contractor at other times, in accordance
1044 with the Operations and Maintenance Manual.

1045 **g. Maintaining Records**

1046 Maintaining complete, accurate and detailed records in accordance with Section 4.12a.

1047 **9.03 Lack of Markets**

1048 If after contacting potential purchasers of any Recovered Material, the Contractor cannot divert
1049 such material from disposal without incurring Marketing Costs (including Recovered Materials
1050 Haul Fees) in excess of:

- 1051 1. The Avoided Disposal Cost, plus any Sales Revenues (defined in Section 9.06) attributable to
1052 such material if City would not be obligated to pay Contractor an Excess Diversion Bonus, or
- 1053 2. One-half of the Avoided Disposal Cost, plus one-half any Sales Revenues (defined in Section
1054 9.06) attributable to such material if City would be obligated to pay Contractor an Excess
1055 Diversion Bonus,

1056 then the Contractor shall Notify the City, including pricing, transportation and net loss
1057 information. The City may consider costs (including Avoided Disposal Cost, Sales Revenues, and
1058 Excess Diversion Bonus) and may further direct the Contractor to use Reasonable Business
1059 Efforts to identify a user willing to accept such Recovered Material, with or without payment
1060 from Contractor. Upon identifying such user, Contractor shall notify the City of such user and
1061 the cost of transportation and payment, if any. The City may direct the Contractor to store such
1062 materials on- or off-Site or transport such Recovered Material to such user or other Persons. If
1063 the City requests Contractor to store such materials off-Site it shall reimburse Contractor the
1064 Direct Costs of such storage. Either Party may propose to delete such material from Recovery
1065 and Processing in accordance with Section 21.01. Contractor's Recovered Materials Losses
1066 shall be limited as provided in Section 9.06.

1067 **9.04 No Warranties**

1068 Contractor shall not make any warranties or representations regarding Recovered Materials
1069 unless specifically authorized by the City. If directed to do so by City, Contractor shall include in
1070 all sales contracts a disclaimer of warranties, including warranties of merchantability and

1071 fitness. The Contractor shall indemnify the City for damages in connection with Marketing in
1072 accordance with Section 11.02a.

1073 **9.05 Liens**

1074 Contractor shall keep Recovered Materials free from liens and other creditors' claims until sold.

1075 **9.06 Recovered Materials Revenues**

1076 **a. Marketing Costs; Sales Revenues**

1077 "Marketing Costs" means:

- 1078 1. Contractor's Recovered Materials Haul Fee, if any, for transporting Recovered Materials to
1079 market (whether brokers, purchasers or other users) in accordance with Section 10.01c,
- 1080 2. Payments by Contractor to third parties for such transportation,
- 1081 3. Payments by Contractor to third parties to induce them to take Recovered Materials for re-
1082 use in a negative market,
- 1083 4. Payments by Contractor for purchase of recyclable materials at the Buy back/Dropoff
1084 Center in accordance with Section 7.02,
- 1085 5. Cash paid by Contractor to purge cfc's in accordance with Section 7.01,
- 1087 6. Brokers' fees,
- 1088 7. Losses due to City-directed placements pursuant to Section 9.02, and
- 1089 8. Other costs approved by the City in advance of expenditure thereof.
- 1090 9. Transportation and disposal or processing costs paid to third parties related to Source
1091 Separated Yard Waste.
- 1092 10. Costs incurred by the City or Contractor relating to transportation and disposal of Residue
1093 from Non-City Buyback Materials, including (1) the City's Direct Costs and Indirect Costs of
1094 transporting said Residue from the Facility to the Designated Disposal Facility, (2) the Direct
1095 Costs the City or Contractor pays to the owner or operator of the Designated Disposal
1096 Facility or Facilities for disposing of said Residue at the Designated Disposal Facility or
1097 Facilities, and (3) any fees, taxes or surcharges levied on said Residue, such as County
1098 Integrated Waste Management Planning Fees due and payable under Article 4 of Chapter 7
1099 of Division 4 of the Ventura County Ordinance Code and resolution adopted pursuant
1100 thereto.
- 1101 11. Contractor shall not incur Marketing Costs in excess of the amounts provided in Section
1102 9.03, and City shall not be obligated to compensate Contractor for any such excess.
- 1103 "Sales Revenues" means all amounts received by the City (or the Contractor) for the sale or
placement of Recovered Materials.

1104 **b. Recovered Materials Profits and Losses**

1105 (1) Recovered Materials Profits

1106 If Sales Revenues in any month exceed Marketing Costs for such month, the excess shall
1107 constitute "Recovered Materials Profits" for such month.

1108 (2) Recovered Materials Losses

1109 If Marketing Costs in any month exceed Sales Revenues for such month, such excess shall
1110 constitute "Recovered Materials Losses" for such month. Contractor's Recovered Materials
1111 Losses shall be limited to Contractor's Loss Share, defined in Section 9.07b.

1112 **9.07 Recovered Material Revenue Payments**

1113 **a. Contractor Invoice**

1114 Together with its monthly Service Fee invoice submitted to the City in accordance with Section
1115 13.10, the Contractor will submit an invoice calculating Contractor's share of Recovered
1116 Materials Profits and Recovered Materials Losses in accordance with subsection b,
1117 accompanied by records substantiating Marketing Costs and Sales Revenues for the preceding
1118 calendar month.

1119 **b. Calculating Contractor's Share of Recovered Materials Profits and Losses**

1120 (1) Recovered Materials Profits

1121 In any month in which there are Recovered Materials Profits, the City shall pay Contractor an
1122 amount equal to:

1123 1. Marketing Costs, plus "Contractor's Profit Share" equal to fifty percent of such recovered
1124 Materials Profits.

1125 (2) Recovered Materials Losses

1126 In any month in which there are Recovered Materials Losses, the City shall pay Contractor an
1127 amount equal to:

1128 1. Marketing Costs, minus "Contractor's Loss Share" equal to the lesser of (a) fifty percent of
1129 such Recovered Materials Losses or (b) Contractor's Loss Limit. "Contractor's Loss Limit"
1130 equals (i) aggregate amount of Contractor's Profit Share during the prior four months,
1131 minus (ii) the aggregate amount of Contractor's Loss Share during such prior four months.

1132 **c. City Payment**

1133 No later than the Service Fee payment date for such month, City shall pay Contractor invoiced
1134 amounts, subject to the dispute resolution procedure provided in Section 13.10. After making
1135 such payment, the City shall be entitled to retain the balance of Recovered Materials revenues.

1136

ARTICLE 10. TRANSPORTATION

1137

10.01 Transportation of Recovered Materials

1138

a. Buyer Does Not Provide Transportation

1139 If purchasers or other users of Recovered Materials in accordance with customary recycled
1140 material industry practice do not transport or arrange for the transportation of Recovered
1141 Materials at a cost less than the Recovered Materials Haul Fee, Contractor shall transport, or
1142 arrange for the transportation of, such Recovered Materials from the Facility.

1143

b. Route and Mileage

1144 Subject to City approval thereof, Contractor shall select the most direct routes from the Facility
1145 to the market which minimize inconvenience and disturbance to the public and comply with
1146 Permits and Applicable Law. Contractor shall provide City with prompt Notice of such route
1147 selection. City may designate an alternate route, whereupon Contractor shall commence
1148 transportation via such route within five days' Notice thereof.

1149

c. Recovered Materials Haul Fee

1150 City shall pay the Contractor for transporting such Recovered Materials \$12.35 per Ton for each
1151 Ton hauled within one hundred miles of the Facility (the "Recovered Materials Haul Fee"). The
1152 Recovered Materials Haul Fee includes Contractor's cost of loading and unloading Recovered
1153 Materials onto and off of the transport rig. The Recovered Materials Haul Fee constitutes a
1154 Marketing Cost in accordance with Section 9.06.

1155

10.02 Transportation of Mixed Waste and Residue

1156

a. Designated Disposal Facility

1157 As of the date hereof, the Designated Disposal Facilities are Simi Valley Landfill and Toland Road
1158 Landfill. The City may designate a new Designated Disposal Facility effective upon two weeks'
1159 Notice to the Contractor, provided that in cases of emergency, the City may immediately
1160 change a Designated Disposal Facility upon telephonic communication to Contractor followed
1161 by Notice. If a Designated Disposal Facility is closed for any reason (other than daily closure in
1162 the course of business, before or after permitted operating hours) and the City does not
1163 designate a new Designated Disposal Facility, the Designated Disposal Facility shall be deemed
1164 to be the disposal facility permitted in accordance with Applicable Law which is closest to the
1165 Facility which will receive Permitted Waste and Residue. City shall directly pay the owner or
1166 operator of the Designated Disposal Facility disposal fees.

1167

1168 1. Designated Disposal Facility – Designated by City - City has designated the Designated
1169 Disposal Facilities where City or Contractor disposes of Permitted Waste and Residue from
1170 Facility. City may designate other or additional Designated Disposal Facilities effective on
1171 two weeks' Notice to Contractor, provided that in cases of emergency, City may
immediately change the Designated Disposal Facility upon telephonic communication to

1172 Contactor followed by Notice. If the Designated Disposal Facility designated by City closes
1173 for any reason (other than daily closure in the course of business, before or after permitted
1174 operating hours) and City does not designate a new Designated Disposal Facility, the
1175 Designated Disposal Facility shall be deemed to be the disposal facility permitted in
1176 accordance with Applicable Law that is closest to the Facility that will receive Permitted
1177 Waste and Residue. City shall directly pay disposal fees to the owner or operator of the
1178 Designated Disposal Facility designated by the City.

1179 2. Designated Disposal Facility – Designated by Contractor. Notwithstanding subsection (a) of
1180 this section, City delegates to Contractor the right to designate one or more Designated
1181 Disposal Facilities that are permitted in accordance with Applicable Law and that are
1182 located within a 100 mile round trip from Facility, measured according to the method set
1183 out in Section 13.04 of this Agreement; provided, however, that such designation by
1184 Contractor shall not take effect until the City Manager approves such designation in writing
1185 and also approves any agreement or amendment thereto entered into or proposed to be
1186 entered into between Contractor and the operator of such Designated Disposal Facility; and
1187 provided also that one such Designated Disposal Facility shall be the Toland Road Landfill,
1188 where, until the City Manager gives Notice to Contractor to the Contrary, Contractor or City
1189 shall dispose of at least 100 tons per day, averaged over a five day work week, of Permitted
1190 Waste and Residue from Facility, as specified in writing by the City Manager.

1191 3. Payment of Disposal Fees. While such delegation to Contractor is in effect, Contractor shall
1192 directly pay disposal fees to the owner or operator of the Designated Disposal Facility;
1193 provided, however, that City will reimburse Contractor for disposal fees pursuant to Section
1194 13.07 only to the extent that such fees do not exceed \$6,500,000 per calendar year, or one-
1195 twelfth of such amount for each month in a calendar year in which such delegation to
1196 Contractor is in effect for less than the entire year. If Contractor is required to obtain bonds
1197 for insurance by the terms of any agreement between Contractor and a Designated Disposal
1198 Facility designated by Contractor, Contractor shall solely bear the cost thereof, and City
1199 shall not reimburse such cost to Contractor pursuant to Section 11.01a, Section 13.07 or
1200 otherwise.

1201 **b. Timing, Routes and Mileage**

1202 City shall have the option of providing transfer services itself or through another Person, or
1203 directing Contractor to provide such services. Contractor shall select the most direct routes
1204 from the Facility to the Designated Disposal Facility which minimize inconvenience and
1205 disturbance to the public and comply with Permits and Applicable Law. Contractor shall
1206 provide City with prompt Notice of such route selection. City may designate an alternative
1207 route, whereupon Contractor shall commence transportation via such route within five days'
1208 Notice thereof.

1209 **c. Transfer Haul Fee**

1210 The City shall pay Contractor the Transfer Haul Fee in accordance with Section 13.04 as a
1211 component of the Service Fee.

10.03 Litter Prevention

1213 Contractor shall not spill or scatter Recovered Materials, Source Separated Yard Waste, Mixed
1214 Municipal Waste or Residue during transfer or transportation thereof. Contractor shall enclose
1215 or cover all vehicles transporting such materials from the Facility in a manner approved by the
1216 City. If any such materials are spilled or scattered, whether on private or public property,
1217 Contractor shall immediately clean them up.

10.04 Vehicle Parking, Fueling and Maintenance

1218 Contractor may park, fuel, maintain and repair vehicles for transportation of Recovered
1219 Materials, Mixed Municipal Waste or Residue in the parking area on Site; provided Contractor
1220 shall ensure that such vehicles do not interfere with or pose any hazard to Permitted Users'
1221 vehicles delivering Permitted Waste to the Facility.
1222

10.05 Disposal Contracting

1223 At the City's request, Contractor shall assist City in identifying disposal options, including landfill
1224 and railhaul agreements. At such time, the Parties will use good faith efforts to negotiate
1225 payment to Contractor for such service.
1226

1227 **ARTICLE 11. INSURANCE, INDEMNITY, BONDS, FURTHER**
1228 **ASSURANCES**

1229 **11.01 Insurance**

1230 **a. Types and amounts**

1231 Contractor shall secure and maintain, and enter into agreements to cause its subcontractors to
1232 secure and maintain, in full force and effect the types and amounts of insurance coverage,
1233 together with related specified deductibles, listed in Exhibit 9.01 or required by law, whichever
1234 is greater; provided that if premiums on liability insurance listed on such Exhibit 9.01 increases
1235 industry-wide more than 25% during the Term of the Agreement, City shall reimburse the
1236 Contractor for the Direct Costs of such excess increase as part of the Service Fee, in accordance
1237 with Section 13.07. City shall not reimburse Contractor for increases attributable to
1238 Contractor's actions or inactions.

1239 Contractor shall further secure and maintain, and enter into agreements to cause its
1240 subcontractors to secure and maintain, insurance policies which are always primary with
1241 respect to the Contractor's Performance Obligations and subcontractors' obligations. Insurance
1242 coverage written specifically for the City or the Facility shall be considered to be excess and not
1243 contributory. The Facility, the City, and the City's affiliated employees, Council members,
1244 officers, officials, agents, assigns and volunteers shall be included as insureds under all policies,
1245 except with respect to applicable professional liability policies specified in Exhibit 9.01. All
1246 insurance shall apply separately to each insured against whom a claim is made or suit is
1247 brought, except with respect to the limits of the insurer's liability.

1248 **b. Insurers**

1249 Contractor shall procure such insurance from insurers approved by the City Chief Financial
1250 Officer, licensed in California, rated not less than "A-VII" or better by A.M. Best Company, Inc.;
1251 provided that the City may waive such requirements.

1252 **c. Notices to City**

1253 Policies must bear endorsements providing the City with thirty days' prior written notice to the
1254 City Chief Financial Officer of any cancellation, non-renewal, change or other modification and
1255 name the City as an additional insured. Such endorsements shall not contain mere "best
1256 effort" modifiers or relieve the insurer from its responsibility to give the City such notice.

1257 **d. Evidence of coverage**

1258 On or before the dates when Contractor is required to procure insurance policies hereunder
1259 Contractor shall file with the City Chief Financial Officer at the address provided below evidence
1260 of coverage in force, including endorsements, in accordance with the provision hereof, together
1261 with a certificate of insurance, on a City-approved form, signed or counter-signed by an
1262 authorized officer of the insurer, certifying that the coverage has not lapsed and shall remain in
1263 effect at all times required hereunder:

1264 City of Oxnard
1265 Finance Department, Financial Services Division
1266 Contract No. A - 7465
1267 300 West Third Street, Suite 302
1268 Oxnard, CA 93030

1269 or such other address as the City may provide. Upon request of the City Chief Financial Officer,
1270 the Contractor shall cause its subcontractors to provide proper evidence of insurance coverage
1271 required hereunder, satisfactory to the City Chief Financial Officer. Contractor shall institute a
1272 comprehensive accounting system to assure the City it is monitoring all insurance requirements
1273 hereunder, including those of its subcontractors.

1274 **11.02 Contractor Indemnification and Defense**

1275 **a. General**

1276 Contractor agrees to indemnify, hold harmless, and defend the City from any and all liability,
1277 lawsuits, claims, demands, damages (whether in contract or tort, including personal injury,
1278 death at any time, or property damage), costs and financial loss, including all costs and
1279 expenses of litigation or arbitration, that result or are claimed to have resulted directly or
1280 indirectly from the wrongful or negligent acts, errors or omissions of Contractor or its agents,
1281 employees, subcontractors or consultants while they are performing services hereunder,
1282 including:

- 1283 1. Personal injuries including wrongful death, and property damage of any kind, nature or sort
1284 resulting from Facility Operations;
- 1285 2. Penalties, fines and charges arising from Contractor's violation of Applicable Law in
1286 connection with Facility Operation;
- 1287 3. Any condition of the Facility or transfer trucks relating to hazardous or toxic substances
1288 (provided, however, that the Contractor's liability for Hazardous Waste pursuant to this
1289 Section shall not exceed the amount described in Section 5.01d);
- 1290 4. Any allegation of infringement, violation or conversion of any patent, licenses, proprietary
1291 right, trade secret or other similar interest, in connection with Facility Operation and the
1292 Facility, including Facility technology, processes, machinery or equipment; or
- 1293 5. Any claims made by, or payments made to, purchasers or users of Recovered Materials for
1294 alleged breaches of warranties of fitness in connection with the beneficiation of
1295 contaminated Recovered Materials but not in connection with product liability for re-use of
1296 Recovered Materials in new products;

1297 **b. Defense of Patent Infringement Suits**

1298 Upon request by the City the Contractor shall defend any lawsuit or proceeding that is brought
1299 against the City insofar as such lawsuit or proceeding is based upon an allegation of
1300 infringement, violation or conversion of any patent, licenses, proprietary right, trade secret or

1301 other similar interest, in connection with Facility Operations and any technology, processes,
1302 machinery or equipment supplied by the Contractor. The Contractor shall pay all liabilities,
1303 damages, claims, demands, judgments, losses, costs and expenses awarded in any such lawsuit
1304 or proceeding it defends, in accordance with subsection a. If as a result of any such lawsuit or
1305 proceeding it defends, the Facility, or any portion thereof, is held to constitute an infringement
1306 or use by the City is enjoined, then the Contractor shall, at its option, either (1) acquire the
1307 right of continued use under the infringed patent, license, proprietary right, trade secret or
1308 other similar interest on behalf of the City or (2) to the satisfaction of the City, modify or
1309 replace the infringing equipment with equipment that is equivalent in quality, performance,
1310 useful life and technical characteristics, which meets Performance Guaranties.

1311 **c. City**

1312 For purposes of this Section, "City" includes City's affiliated employees, Council members,
1313 officers, officials, agents, assigns and volunteers.

1314 **11.03 City Indemnification and Defense**

1315 City agrees to indemnify, hold harmless, and defend the Contractor from any and all liability,
1316 lawsuits, claims, demands, damages (whether in contract or tort, including personal injury,
1317 death at any time, or property damage), costs and financial loss, including all costs and
1318 expenses of litigation or arbitration, that result or are claimed to have resulted directly or
1319 indirectly from the wrongful or negligent acts, errors or omissions of City or its agents,
1320 employees, subcontractors or consultants with respect to the Facility.

1321 **a. Contractor**

1322 For purposes of this Section, "Contractor" includes Contractor's affiliated employees, officers,
1323 directors, officials, agents and assigns.

1324 **11.04 Fidelity Bond**

1325 Contractor shall secure and throughout the Term hereof maintain in full force and effect a
1326 fidelity bond in an amount no less than \$1,000,000, subject to adjustment to reflect actual
1327 amounts of cash that Contractor collects from Selfhaulers and handles at the Buy Back/Drop Off
1328 Center and the amounts of checks Contractor may receive from Permitted Users in accordance
1329 with Section 4.17 and purchases of Recovered Materials in accordance with Section 9.02e.

1330 Contractor shall procure such bond from underwriters approved by the City Chief Financial
1331 Officer, licensed in California, rated not less than "A-7" by A.M. Best Company, Inc.; provided
1332 that the City may waive such requirements.

1333 **11.05 Limited Financial Guaranty Agreement**

1334 As of the date hereof and throughout the Term, Contractor shall ensure that it or its successors
1335 or assigns acceptable to the City, shall execute and maintain a legal, valid and binding Limited
1336 Financial Guaranty Agreement appended hereto as Exhibit 9.02.

11.06 Bond Trustee as Additional Obligee

1338 If requested by the City, Contractor will use Reasonable Business Efforts to arrange for any and
1339 all of the insurance policies or bonds described in this Article to be amended by endorsement
1340 or otherwise, at no cost to the City, to add the trustee of Municipal Obligations or any other
1341 bonds or obligations issued, or caused to be issued, as co-obligee, beneficiary or party in
1342 interest. If such amendment, endorsement or otherwise requires payment of additional
1343 premiums, City shall reimburse Contractor the additional cost thereof.

1344 **ARTICLE 12. CRIMINAL ACTIVITY OF CONTRACTOR**

1345 **12.01 Criminal Activity of Contractor**

1346 a. Should the Contractor or any of its officers or directors have a criminal conviction of any
1347 offence relating to solid waste activities anywhere or any activities within the City of Oxnard
1348 from a court of competent jurisdiction with respect to:

- 1349 • fraud or a criminal offense in connection with obtaining, attempting to obtain, or
1350 performing a public or private agreement; or
- 1351 • bribery or attempting to bribe a public officer or employee of a local, state, or federal
1352 agency in that officer or director's or Contractor's employee's official capacity; or
- 1353 • embezzlement, racketeering, false claims, false statements, forgery, falsification or
1354 destruction of records, obstruction of justice, receiving stolen property, or theft; or
- 1355 • conviction for any other crime indicating a lack of business integrity or business honesty
1356 that seriously and directly affects the present responsibility of the Contractor or its
1357 officers or directors; or

1358 b. Should the Contractor or any of its respective officers or directors have made an admission
1359 of guilt or pled nolo contendere to the conduct described in this subsection above, which is
1360 a matter of record, then each employee, officer, or director, as the case may be, of the
1361 Contractor responsible for such proscribed conduct shall be promptly terminated and/or
1362 replaced. Contractor shall have fifteen days' notice and opportunity following such
1363 conviction to present evidence in mitigation thereof, and on and after such fifteenth day, if
1364 such employee, officer or director is not promptly terminated or replaced, the City reserves
1365 the right to unilaterally terminate this Agreement pursuant to Section 15.01a or to impose
1366 such other sanctions (which may include financial sanctions, temporary suspensions or any
1367 other condition deemed appropriate short of termination) as it shall deem proper.

1368

ARTICLE 13. SERVICE FEE**1369 13.01 Service Fee**

1370 The City shall pay Contractor solely from the City's Solid Waste Management Enterprise Fund at
 1371 the time and in the manner described in Section 13.10 as compensation for performing
 1372 Contractor's Performance Obligations with respect to Facility Operations a fee (the "Service
 1373 Fee") or portion thereof in accordance with Section 15.01d, calculated as follows:

1374 $SF = BSF + ETF + TF + EDB + RC + A - O$

1375 where:

1376 SF = Service Fee
 1377 BSF = Base Service Fee (Base MRF Fee or Base Facility Fee)
 1378 ETF = Excess Tonnage Fee
 1379 TF = Transfer Haul Fee
 1380 EDB = Excess Diversion Bonus
 1381 RC = Reimbursable Costs
 1382 A = Adjustments
 1383 O = Offsets

1384

1385 The Service Fee includes all Contractor's Direct Costs and Indirect Costs, plus Profit, of fulfilling
 1386 and complying with its Performance Obligations, including labor (including fringe benefits);
 1387 administration, telephone/telefax, equipment repair and maintenance (but not replacement in
 1388 accordance with Section 4.08), building and grounds maintenance and repair, supplies;
 1389 insurance and fidelity bonds; taxes; Marketing and Permits compliance but excluding those
 1390 reimbursable costs listed in Section 13.07.

1391 13.02 Base Service Fee**1392 a. Base MRF Fee**

1393 The Parties acknowledge that while Simi Valley Landfill remains open the City may direct haul
 1394 Mixed Municipal Waste directly to Simi Valley Landfill without transferring such waste at the
 1395 Facility. Beginning on the date the City commences paying the Service Fee in accordance with
 1396 Section 13.01, unless the City directs Contractor to commence Transfer Station operation as
 1397 provided in subsection b, the City shall pay Contractor the Base MRF Fee (the "Base MRF Fee")
 1398 of five million two hundred and seventy thousand three hundred and forty-two dollars
 1399 (\$5,270,342) for up to 63,427 Tons ("Base MRF Tonnage") per Contract Year of Delivered
 1400 Source Separated Recyclable Materials, Recyclable Waste and Recyclable Rich Waste, and
 1401 Source Separated Yard Waste and Construction and Demolition Debris, if any, for its
 1402 Performance Obligations with respect to the MRF, Buyback/Dropoff Area and Recyclable
 1403 Household Hazardous Waste Collection Area, acceptance and transfer of Permitted Waste
 1404 Delivered by Selfhaulers, and Recovery, Processing and Marketing of Recovered Materials

1405 therefrom. If the City directs the Contractor to increase the Base MRF Tonnage, the Base MRF
1406 Fee will be increased in accordance with Exhibit 5.02.

1407 **b. Base Facility Fee**

1408 City shall pay Contractor the Base Facility Fee (the "Base Facility Fee") of five million two
1409 hundred and seventy thousand three hundred and forty two dollars (\$5,270,342) for up to
1410 152,826 Tons ("Base Facility Tonnage") of Delivered Permitted Waste per Contract Year and for
1411 all its Performance Obligations during Facility Operations. If the City directs the Contractor to
1412 increase the Facility Throughput Guaranty, the Base Facility Fee will be increased in accordance
1413 with Exhibit 5.02.

1414 The Base MRF Fee or Base Facility Fee, as applicable, are herein from time to time referred to
1415 as the "Base Service Fee".

1416 Upon request of the City, Tons delivered by Permitted Users other than the City shall be
1417 credited to the City's Base Facility Tonnage. If less than the applicable Base Facility Tonnage is
1418 Delivered in any Contract Year, or if it appears to the City that such amounts will not be
1419 delivered by the end of any Contract Year, then, upon direction of the City the Contractor shall
1420 use Reasonable Business Efforts to procure additional Permitted Waste, including particularly
1421 Source Separated Recyclable Materials, Recyclable Waste, Recyclable Rich Waste, Source
1422 Separated Yard Waste, Mixed Municipal Waste from industrial sources or Construction and
1423 Demolition Debris, as the case may be, subject to City approval thereof, which Permitted Waste
1424 shall be deemed to be Delivered by the City hereunder. However, City shall nevertheless be
1425 obligated to pay the Base Service Fee whether or not Base Facility Tonnage is Delivered to the
1426 Facility and whether or not City ceases municipal collection of Permitted Waste and contracts
1427 with private Persons for the collection thereof.

1428 **13.03 Excess Tonnage Fee**

1429 **a. Excess MRF Tonnage Fee**

1430 The City shall pay Contractor nineteen dollars and forty cents (\$19.40) for each Ton of Source
1431 Separated Recyclable Materials, Recyclable Waste, Recyclable Rich Waste and Source
1432 Separated Yard Waste and Construction and Demolition Debris, if any, Delivered in excess of
1433 the Base MRF Tonnage (the "Excess MRF Tonnage Fee"). If the City directs the Contractor to
1434 increase the Base MRF Tonnage, the Excess MRF Tonnage Fee will be increased in accordance
1435 with Exhibit 5.02.

1436 **b. Excess Facility Tonnage Fee**

1437 The City shall pay Contractor eighteen dollars and twenty four cents (\$18.24) for each Ton of
1438 Permitted Waste Delivered in excess of the Base Facility Tonnage (the "Excess Facility Tonnage
1439 Fee"). If the City directs the Contractor to increase the Facility Throughput Guaranty, the
1440 Excess Facility Tonnage Fee will be increased in accordance with Exhibit 5.02.

1441 The Excess MRF Tonnage Fee and Excess Facility Tonnage Fee together are referred to as the
1442 "Excess Tonnage Fee".

1443 **13.04 Transfer Haul Fee**

1444 City shall pay Contractor for transporting Permitted Waste not Processed at the MRF and
1445 Residue (i) nine and eighty six one hundredths cents (\$0.0986/Ton-mile) if at the Simi Valley
1446 Landfill or Toland Road Landfill, for each Ton hauled and mile driven, round-trip, to the
1447 Designated Disposal Facility, or, (ii) if the Designated Disposal Facility is any disposal facility
1448 other than (i) within 100 miles round-trip of the Facility, eight and one half cents (\$0.085/Ton-
1449 mile) for each Ton hauled and mile driven round-trip (the "Transfer Haul Fee"). If at the end of
1450 each month the Contractor does not meet its Recovery Guaranty calculated on a Contract Year-
1451 to-date basis for reasons other than Uncontrollable Circumstances, then the City shall not be
1452 liable to pay the Contractor any Transfer Haul Fee for the amount of Permitted Waste which
1453 Contractor would have Recovered had it met the Contract Year-to-date Recovery Guaranty but
1454 comprised excess Residue; provided that at the end of each Contract Year, if Contractor meets
1455 its Recovery Guaranty for the entire Contract Year, City shall reimburse Contractor for any
1456 Transfer Haul Fees previously withheld during such Contract Year.

1457 Either Party may require an adjustment of the then prevailing Transfer Haul Fee upwards or
1458 downwards upon demonstration that such Fee is in excess of 20% more or less than the then
1459 prevailing price of transporting waste in Santa Barbara, Ventura and Los Angeles Counties.
1460 Such demonstration may include waste transfer agreements in such geographic area and
1461 published indices or studies.

1462 Mileage shall be calculated from the exit scales of the Facility to the Designated Disposal Facility
1463 and back to the Facility, either by (1) the most direct route which Contractor's vehicle may take
1464 in accordance with Applicable Law, including weight limits and Sections 10.01b and 10.02b;
1465 provided, Contractor may take a longer route for reasons including time savings, but Contractor
1466 shall not be compensated for such extra mileage, or (2) a route designated by the City in
1467 accordance with Section 10.02b.

1468 If City directs Contractor to transport materials in excess of one hundred miles round-trip it
1469 shall institute a Change Order in accordance with Section 21.01a.

1470 **13.05 Excess Diversion Bonus**

1471 For every Ton of Recovered Materials Contractor monthly Recovers, Processes, markets in
1472 accordance with Article 9 and diverts from disposal in excess of the Materials Recovery
1473 Guaranty calculated for such calendar month in accordance with Exhibit 7.01 and submitted to
1474 City on the Service Fee Invoice Date, City will pay Contractor on the next Service Fee Payment
1475 Date one-half of the City's Avoided Disposal Cost per diverted Ton (the "Excess Diversion
1476 Bonus"):

1477 $EDB = 1/2 \times [ADC \times ERM]$,

1478 where

1479 EDB = Excess Diversion Bonus

1480 ADC = Avoided Disposal Cost per Ton of Excess Recovered Materials

1481 ERM = Recovered Materials Contractor monthly Recovered, Processes, markets in accordance
1482 with Article 9 and diverts from disposal in excess of the Materials Recovery Guaranty calculated
1483 for such calendar month in accordance with Exhibit 7.01 ("**Excess Recovered Materials**")

1484 "**Avoided Disposal Cost**" means the Transfer Haul Fee the City would have paid Contractor to
1485 transport such Ton to the Designated Disposal Facility *plus* the tipping fee the City would have
1486 paid for such Ton at the Designated Disposal Facility.

1487 If the annual calculation of the Materials Recovery Guaranty indicates that less Tons were
1488 diverted than was calculated for that year's twelve months in the aggregate, Contractor shall
1489 reimburse City for City's overpayment of Excess Diversion Bonuses by August 1, or at its option,
1490 the City may withhold such overpayment from the Service Fee.

1491 **13.06 Processing Fee Rebate**

1492 Contractor shall provide to the City a processing fee rebate of \$11.00 per ton for Recyclable
1493 Materials delivered to Facility from other material recovery facilities owned or operated by the
1494 Contractor from such facilities as the American Waste Transfer Station located at 1449 West
1495 Rosecrans Avenue in Garden, California and the Bel Art Waste Transfer Station located at 2495
1496 East 68th Street in Long Beach, California. The Contractor shall deduct the processing fee
1497 rebate from its monthly invoice to the City for marketing cost and Contractor's net share of
1498 recovered materials. The processing fee shall be line-itemized on the Contractor's monthly
1499 invoice indicating the number of tons applicable to the processing fee rebate for the month
1500 being invoiced. The provisions of this Section 13.06 shall be retroactive to October 1, 2007.

1501 **13.07 Reimbursable Costs**

1502 As part of the Service Fee, City shall reimburse Contractor the following Direct Costs monthly:

1503 **a. Utility Costs**

1504 Any utility costs paid by Contractor which City should have paid in accordance with Section
1505 4.18;

1506 **b. Certain Insurance Premium Increases**

1507 Increases in insurance premiums in accordance with Section 11.01a;

1508 **c. Certain Unpermitted Waste Handling, Transportation and Disposal Costs**

1509 Excess costs incurred by Contractor for third parties' handling, transportation and disposal of
1510 inadvertently received Unpermitted Waste in accordance with Section 5.01d;

1511 **d. Recovered Materials Sales Losses**

1512 Reimbursement for Recovered Materials Losses in accordance with Section 9.07b;

1513 **e. Recovered Materials Storage Off-Site**

1514 Direct Costs of storing Recovered Materials off-Site in accordance with Section 9.03; and

1515 **f. Designated Disposal Facility Fees**

1516 If City does not pay Designated Disposal Facility fees in accordance with Section 10.02a and
1517 Contractor advances money to pay such fees, reimbursement thereof.

1518 **13.08 Adjustments**

1519 The City shall adjust the Service Fee as soon as practicable, but at all events within forty-five
1520 days, in amounts consequent upon the following events, retroactively effective on the
1521 occurrence of such events:

1522 **a. Change Orders**

1523 Pursuant to a Change Order requiring a Service Fee adjustment in accordance with Article 21.

1524 **b. Taxes**

1525 For the imposition after the date hereof of any new or additional (i) federal, state or local taxes
1526 or fees imposed upon and paid by the Contractor for the acceptance, Recovery, Processing,
1527 Transfer or Marketing of Permitted Waste provided such taxes or fees apply only to solid waste
1528 facilities or solid waste management activities, (ii) fuel taxes paid by the Contractor in an
1529 amount equal to the product of any per gallon increase occurring after the date hereof, times
1530 the number of gallons of fuel consumed by the Contractor during any month to operate
1531 equipment at the Facility, and (iii) possessory interest tax; and for the reduction or deletion
1532 thereof.

1533 **c. Other Amounts**

1534 In accordance with any other provisions hereof.

1535 **13.09 Offsets**

1536 The City may offset against the Service Fee the following amounts due and owing by Contractor
1537 to City, if Contractor has not paid City such amounts by the Service Fee Payment Date:

1538 **a. Damages**

1539 Any unpaid damages, including under Sections 5.01, 5.02 and 14.01;

1540 **b. Reimbursements**

1541 Unpaid reimbursements of City's substitute performance costs under Section 15.04;

1542 **c. Permitted User Fees Not Remitted to City**

1543 Any tipping fees, Excess Capacity Arrangement fees, and other moneys paid by Permitted Users
1544 and Selfhaulers which the Contractor was obligated to remit to the City in accordance with
1545 Section 4.17d but did not remit;

1546 **d. Recovered Materials Revenues Not Remitted to City**

1547 Any Recovered Materials Revenues which the Contractor was obligated to remit to the City in
1548 accordance with Section 9.01 but did not remit;

1549 **e. Overpayment of Excess Diversion Bonus**

1550 Overpayment of the Excess Diversion Bonus under Section 13.05, in connection with the annual
1551 reconciliation of the Service Fee; and

1552 **f. Other**

1553 Any other amounts required herein, including adjustments of Excess Tonnage Fees or damages
1554 under Section 13.10.

1555 **13.10 Payment Procedure**

1556 **a. Monthly**

1557 On or before the tenth day of each month ("**Service Fee Invoice Date**"), Contractor shall submit
1558 an itemized invoice for the following amounts:

1559 (1) Base Operating Fee

1560 One-twelfth of the Base Service Fee in accordance with Section 13.02; plus

1561 (2) Excess Tonnage Fee

1562 The Excess Tonnage Fee in accordance with Section 13.03, based on a pro-rated monthly Base
1563 MRF Tonnage or Base Facility Tonnage, as the case may be, equal to one-twelfth the annual
1564 Base MRF Tonnage or Base Facility Tonnage.

1565 (3) Transfer Haul Fee

1566 The Transfer Haul Fee in accordance with Section 13.04; plus

1567 (4) Excess Diversion Bonus

1568 The Excess Diversion Bonus in accordance with Section 13.05; plus

1569 (5) Reimbursable Costs

1570 Any reimbursable costs in accordance with Section 13.07; plus

1571 (6) Adjustments

1572 Adjustments in accordance with Section 13.07; minus

(7) Offsets

1574 Any offsets in accordance with Section 13.09.

1575 City shall pay Contractor such invoice on or before the thirtieth (30th) day of each month (the
1576 "Service Fee Payment Date"), unless it disputes such amounts, other than the Base Service Fee,
1577 in accordance with subsection c. City shall pay Contractor such invoice on or before the thirtieth
1578 (30th) day of each month (the "Service Fee Payment Date"), unless City disputes such amounts,
1579 other than the Base Service Fee, in accordance with subsection c; provided, however, that City
1580 shall pay Contractor any amounts included in such invoice for reimbursement to Contractor of
1581 Designated Disposal Facility Fees within 30 days of the date that City receives such invoice.

1582 **b. Annual Adjustments**

1583 Within 120 days of the conclusion of each Contract Year, Contractor shall calculate the amount
1584 of Excess Tonnage Fee for the preceding Contract Year and compare it with the amount of
1585 Excess Tonnage Fees paid by City to Contractor monthly in the aggregate during such Contract
1586 Year. If City has overpaid such Excess Tonnage Fees, Contractor will reimburse City such
1587 overpayment within 30 days of City notice. If Contractor does not reimburse City by the
1588 specified due date, the City may withhold such amounts from the Service Fee until paid in full.

1589 Contractor shall also calculate the amount of damages, if any, in accordance with Section 14.01
1590 for the preceding Contract Year, and compare it with the amount of damages, if any, paid by
1591 Contractor to City monthly in the aggregate during such Contract Year. If Contractor has
1592 overpaid such damages, City will reimburse Contractor such overpayment on or before the next
1593 Service Fee Invoice Date. If Contractor has underpaid such damages, Contractor will pay such
1594 additional damages to City on or before August 1. If Contractor does not pay City by the
1595 specified due date, the City may withhold such amounts from the Service Fee until paid in full.

1596 **c. Disputes**

1597 (1) City's Notice of Dispute

1598 If City disputes any amount calculated by Contractor in accordance with subsections a and b, it
1599 shall pay or offset the undisputed amount, as the case may be, and give Contractor Notice of
1600 such dispute within fifteen days of receipt thereof, together with any request for additional
1601 information, identified with reasonable specificity, with respect thereto.

1602 (2) Contractor's Response

1603 Within thirty Working Days of receiving the Contractor's Notice, the Contractor shall respond to
1604 City's dispute and supply any such information. If the Contractor does not respond within such
1605 time, it will be deemed to concur with City. If Contractor concurs or is deemed to concur, it shall
1606 promptly amend the disputed invoice.

1607 (3) Dispute Resolution

1608 If City disagrees with Contractor's response and City and Contractor cannot reach agreement
1609 during an ensuing fifteen Working Day period following the Contractor's response, the Parties
1610 shall submit the matter to the Independent Arbitrator for determination in accordance with
1611 Section 16.02.

1612 **13.11 Rate Covenant**

1613 The City shall establish and collect rates, fees and charges for municipal solid waste
1614 management services which, when combined with unappropriated and unexpended fund
1615 balances in the City's solid waste enterprise fund or other available sources, will provide
1616 amounts sufficient to pay the costs thereof, including the Service Fee. The City acknowledges
1617 that the Service Fee constitutes a current operating expense of the City for purposes of any
1618 resolution or other agreement entered into by the City in connection with the issuance of
1619 Municipal Obligations.

1620 **13.12 Payment**

1621 Contractor agrees that payment by City to Contractor shall not constitute nor be deemed a
1622 release of the responsibility and liability of Contractor, its employees, subcontractors, agents
1623 and consultants for the services performed hereunder nor shall such payment be deemed to be
1624 an assumption of responsibility or liability by City for any defect or error in such services.

1625 **13.13 Payment to Contractor for Non-City Collected Waste**

1626 Notwithstanding anything in the Service Agreement to the contrary, for purposes of calculating
1627 the Base Service Fee in accordance with Section 13.02 and the Excess Tonnage Fee in
1628 accordance with Section 13.03, Exhibit 5.02 attached hereto as amended shall be used, and
1629 only City-Collected Waste (as defined in Exhibit 1.01) will be considered. With respect to Non-
1630 City Collected Waste (other than Non-City Buyback Waste, with respect to which Section 7.03
1631 applies), in addition to the amounts otherwise payable by the City pursuant to Article 13, the
1632 City shall pay to the Contractor \$8.41 per ton (as escalated in accordance herewith) of such
1633 Non-City Collected Waste shall be separately itemized on records, invoices and in reports
1634 rendered by the Contractor pursuant to the Service Agreement.

1635 **13.14 New Annual Payment**

1636 If the term of the Agreement set forth in Article 3.01 is one year, Contractor shall pay the City
1637 the total sum of six hundred fifty five thousand dollars (\$655,000) payable in equal monthly
1638 installments of fifty four thousand five hundred and eighty three and 33/100 dollars
1639 (\$54,583.33) in arrears, on the fifth (5th) calendar day after the end of the calendar month for
1640 which such payment was due. The foregoing monthly payment shall not be deemed late and
1641 no penalties shall accrue and no breach or default shall exist by Contractor, unless (a) City has
1642 delivered to Contractor written notice of Contractor's failure to make such payment which
1643 notice shall require that payment be made within five (5) calendar days after delivery of such
1644 written notice; and (b) such payment is not received by City by the fifteenth (15th) day of the

1645 calendar month after the date such payment was due. If any such payment is not made as and
1646 when due, the City may elect, upon written notice to Contractor, to accelerate the remaining
1647 monthly installments due for the remainder of the Term.

1648 ~~FOR~~
1649 If the term of the Agreement set forth in Article 3.01 is eighteen months, Contractor shall pay
1650 the City the total sum of eight hundred and one thousand six hundred and sixty seven dollars
1651 (\$801,667) payable in equal monthly installments of sixty-six thousand eight hundred five and
1652 58/100 dollars (\$66,805.58) in arrears, on the fifth (5th) calendar day after the end of the
1653 calendar month for which such payment was due. The foregoing monthly payment shall not be
1654 deemed late and no penalties shall accrue and no breach or default shall exist by Contractor,
1655 unless (a) City has delivered to Contractor written notice of Contractor's failure to make such
1656 payment which notice shall require that payment be made within five (5) calendar days after
1657 delivery of such written notice; and (b) such payment is not received by City by the fifteenth
1658 (15th) day of the calendar month after the date such payment was due. If any such payment is
1659 not made as and when due, the City may elect, upon written notice to Contractor, to accelerate
1660 the remaining monthly installments due for the remainder of the Term.

1661 ~~FOR~~
1662 If the term of the Agreement set forth in Article 3.01 is three years, Contractor shall pay the City
1663 the annual sum of eight hundred thirty thousand eight hundred and thirty-three dollars
1664 (\$830,833) payable in equal monthly installments of sixty-nine thousand two hundred thirty-six
1665 and 08/100 dollars (\$69,236.08) in arrears, on the fifth (5th) calendar day after the end of the
1666 calendar month for which such payment was due. The foregoing annual payments shall
1667 continue until termination of this Agreement. However, the foregoing monthly payment shall
1668 not be deemed late and no penalties shall accrue and no breach or default shall exist by
1669 Contractor, unless (a) City has delivered to Contractor written notice of Contractor's failure to
1670 make such payment which notice shall require that payment be made within five (5) calendar
1671 days after delivery of such written notice; and (b) such payment is not received by City by the
1672 fifteenth (15th) day of the calendar month after the date such payment was due. If any such
1673 payment is not made as and when due, the City may elect, upon written notice to Contractor,
1674 to accelerate the remaining monthly installments due for the applicable twelve (12) month
1675 period in which the applicable payment has not been made. (Each twelve (12) month period
1676 shall commence on the first day of February of each calendar year during the term of the
1677 Agreement.)

1678 **ARTICLE 14. BREACHES, DEFAULTS AND REMEDIES**1679 **14.01 Events of Default**1680 **a. Contractor Default**

1681 Each of the following shall constitute an event of default ("Contractor Default") hereunder:

1682 (1) Breach of Agreement

1683 Contractor fails to perform any of its obligations hereunder, other than those described in items
1684 (4) below, and fails to cure such breach (i) within thirty days of receiving Notice from City
1685 specifying the breach, provided that if the nature of the breach is such that it will reasonably
1686 require more than thirty days to cure, Contractor shall not be in default so long as Contractor
1687 promptly commences to cure such breach and diligently proceeds to complete such cure within
1688 sixty days; or (ii) immediately, if the breach is such that the health, welfare or safety of the
1689 public is endangered thereby and City can provide substitute performance in accordance with
1690 Section 15.04.

1691 (2) Equipment Attached

1692 Any equipment owned by Contractor used in Facility Operations is seized, attached or levied
1693 upon.

1694 (3) Failure to Accept Permitted Waste

1695 Contractor fails to accept at least fifty percent of the Daily Facility Throughput Guaranty
1696 Delivered to the Facility for more than four consecutive days.

1697 (4) Bankruptcy, Insolvency, Liquidation

1698 Contractor files a voluntary claim for debt relief under any applicable bankruptcy, insolvency,
1699 debtor relief, or other similar law now or hereafter in effect, or shall consent to the
1700 appointment of or taking of possession by a receiver, liquidator, assignee, trustee, custodian,
1701 administrator (or similar official) of Contractor for any part of Contractor's operating assets or
1702 any substantial part of Contractor's property, or shall make any general assignment for the
1703 benefit of Contractor's creditors, or shall fail generally to pay Contractor's debts as they
1704 become due or shall take any action in furtherance of any of the foregoing.

1705 A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in
1706 any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law
1707 now or hereafter in effect, or Contractor consents to or fails to oppose any such proceeding, or
1708 any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian,
1709 trustee, sequestrator (or similar official) of the Contractor or for any part of the Contractor's
1710 operating equipment or assets, or orders the winding up or liquidation of the affairs of the
1711 Contractor.

1712 **b. City Default**

1713 Each of the following shall constitute an event of default ("City Default") hereunder:

1714 (1) Payment

1715 Failure of the City to pay the Service Fee in accordance with Article 13 or any other amounts
1716 due and payable hereunder.

1717 (2) Breach of Agreement

1718 City fails to perform any of its obligations hereunder and fails to cure such breach (i) within
1719 thirty days of receiving Notice from Contractor specifying the breach, provided that if the
1720 nature of the breach is such that it will reasonably require more than thirty days to cure, City
1721 shall not be in default so long as City promptly commences to cure such breach and diligently
1722 proceeds to complete such cure within sixty days.

1723 (3) Bankruptcy, Insolvency, Liquidation

1724 City files a voluntary claim for debt relief under any applicable bankruptcy, insolvency, debtor
1725 relief, or other similar law now or hereafter in effect, or shall consent to the appointment of or
1726 taking of possession by a receiver, liquidator, assignee, trustee, custodian, administrator (or
1727 similar official) of City for any part of City's operating assets or any substantial part of City's
1728 property, or shall make any general assignment for the benefit of City's creditors, or shall fail
1729 generally to pay City's debts as they become due or shall take any action in furtherance of any
of the foregoing.

1731 A court having jurisdiction enters a decree or order for relief in respect of the Agreement, in
1732 any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law
1733 now or hereafter in effect, or City consents to or fails to oppose any such proceeding, or any
1734 such court enters a decree or order appointing a receiver, liquidator, assignee, custodian,
1735 trustee, sequestrator (or similar official) of the City or for any part of the City's operating
1736 equipment or assets, or orders the winding up or liquidation of the affairs of the City.

1737 (4) Breach of Representations or Warranties

1738 Any representation or warranty of the City is untrue as of the date or bring down thereof.

1739 **14.02 Remedies Upon Default**

1740 **a. City's Remedies**

1741 Upon occurrence of a Contractor Default, City shall have the following rights:

1742 (1) Termination

1743 To terminate the Agreement or any portion of the Contractor's Performance Obligations in
1744 accordance with Section 15.01 and, at the City's option, perform Contractor's obligations
1745 hereunder in accordance with Section 15.04;

1746 (2) Suspension

1747 To suspend the Agreement in accordance with Section 15.01 and, at the City's option, Perform
1748 Contractor's obligations hereunder in accordance with Section 15.04; and

1749 (3) All Other Available Remedies

1750 To exercise its remedies in accordance with Section 14.01 and any other available remedies at
1751 law and in equity, including specific performance; provided, that prior to instituting any court
1752 proceeding, the City may request mediation or shall direct dispute resolution by the
1753 Independent Arbitrator in accordance with Section 16.02.

1754 Contractor acknowledges that City's remedy of damages for a breach hereof by Contractor in
1755 accordance with Section 14.01 may be inadequate for reasons including:

- 1756 • The urgency of timely, continuous and high-quality waste management service
1757 hereunder, including Recovery, Processing and/or transfer for disposal of putrescible
1758 wastes which constitute a threat to public health;
- 1759 • The long time and significant investment of money and personnel (both City staff and
1760 private consultants, including engineers, financial advisors, procurement counsel, bond
1761 counsel and investment bankers) required to request and evaluate proposals for
1762 alternative service comparable to the service provided hereunder for the price provided
1763 hereunder, and to negotiate new agreements therefore;
- 1764 • The City's reliance on Contractor's technical waste management expertise;
- 1765 • The City's reliance on Contractor's established relationships with recovered materials
1766 brokers and purchasers; and
- 1767 • City's obligation to repay Municipal Obligations, regardless whether it secures
1768 Contractor's performance hereunder.

1769 Consequently, City shall be entitled to all available equitable remedies, including injunctive
1770 relief.

1771 **b. Contractor's Remedies**

1772 Upon occurrence of a City Default, Contractor shall have the right to exercise any and all
1773 available remedies at law; provided, that prior to instituting any court proceeding, the
1774 Contractor shall direct dispute resolution by the Independent Arbitrator in accordance with
1775 Section 16.02.

1776 **14.03 Remedies not Exclusive**

1777 Each Party's rights and remedies in event of the other Party's breach and default hereunder are
1778 not exclusive. A Party's exercise of one such remedy is not an election of remedies.

1779 14.04 Waiver

1780 Either Party's waiver of any breach or default shall not be deemed to be a waiver of any other
1781 breach or default, including ones with respect to the same obligations hereunder. The
1782 subsequent acceptance by either Party of any damages or other money paid by the other Party
1783 shall not be deemed to be a waiver by such Party of any preexisting or concurrent breach or
1784 default.

1785 14.05 Jurisdiction; Venue

1786 The Parties shall bring any lawsuits arising out of this Agreement in State courts, which shall
1787 have exclusive jurisdiction over such lawsuits. The Parties agree that venue is made in and will
1788 be performed in courts sitting in Ventura County. Parties further agree that the site of any
1789 other hearing or action, whether arbitration or non-judicial, of whatever nature of kind
1790 regarding this Agreement, shall be conducted in Ventura County. Parties agree that a prevailing
1791 Party's reasonable costs, attorneys' fees (including the reasonable value of the services
1792 rendered by the City Attorney's Department) and expenses, including investigation fees and
1793 expert witness fees, shall be paid by the non-prevailing party in any dispute involving their
1794 terms and conditions hereof.

**1795 14.06 Estoppel and Representation and Warranty Regarding No Breach or
1796 Default**

1798 City and Contractor each represent and warrant to the other, after due and careful
1799 investigation and inquiry of all relevant facts and information, that they are presently unaware
1800 that the other is in breach or default of the Agreement, and no event has occurred which, with
1801 the giving of notice or the passage of time, would constitute a breach or default by the other
1802 party under the Agreement. To the extent either City or Contractor has claimed the other is
1803 now, or previously was, in default or breach under the Agreement (or any events occurred
1804 which, with the giving of notice or passage of time, would constitute a breach or default by the
1805 other party), such party withdraws, retracts, rescinds and waives any such claim of breach or
default.

1806 ARTICLE 15. SUSPENSION OR TERMINATION**1807 15.01 City Right to Suspend or Terminate****1808 a. Termination Events**

1809 City shall have the right to terminate this Agreement or direct Contractor to cease performing
1810 any portion of its Performance Obligations hereunder in the following events:

1811 (1) Uncontrollable Circumstances

1812 To the extent provided in Section 19.01f, upon the occurrence and continuance of an
1813 Uncontrollable Circumstance.

1814 City shall have the right to terminate this Agreement in the following additional events:

1815 (2) Criminal Activity of Contractor

1816 Contractor fails or is unable to terminate and/or replace persons engaged in any sanctioned
1817 behavior described in Article 12.

1818 b. Suspension Events

1819 City shall have the right to suspend this Agreement, in whole in or in part, upon the occurrence
1820 of a Contractor Default for failure to accept Permitted Waste for four days as described in
1821 Section 14.01a(3); provided such suspension is for no longer than forty-five days, during which
1822 period the Contractor shall have the opportunity to demonstrate to the satisfaction of the City
1823 that Contractor can once again fully perform its Performance Obligations, in which event City's
1824 right to suspend or terminate the Agreement shall cease and Contractor may re-enter the
1825 Facility and resume its Performance Obligations.

1826 c. Notice

1827 City shall give Contractor Notice of termination, which shall be effective thirty days thereafter;
1828 provided that such termination shall be effective immediately **(1)** in the Contractor Event of
1829 Default described in Section 14.02, or **(2)** in a Contractor Event of Default which endangers
1830 public health, welfare or safety. City shall give Contractor Notice of suspension, which shall be
1831 effective immediately.

**1832 d. Suspension, Termination of a Portion of Performance Obligations: Reduction
1833 in Service Fee**

1834 In the event the City suspends all or a portion of this Agreement or terminates a portion of
1835 Contractor's Performance Obligations, Contractor shall continue to fully perform its obligations
1836 under the remaining portions hereof which are not suspended or terminated, and the Service
1837 Fee shall be adjusted to reflect actual reductions in Contractor's Direct Costs, Indirect Costs and
1838 attributable Profit.

1839
1840
1841
1842
1843

For example, if City suspends Contractor's Performance Obligations with respect to Recovery and Processing of Source Separated Recyclable Materials upon the occurrence of one or more events listed in subsection a above, Contractor would be obligated to fully perform its other obligations hereunder, including Facility Operation of the Transfer Station and other Material Recovery and Processing.

1844 **15.02 Contractor's Right to Terminate**

1845 Contractor shall have the right to terminate this Agreement only in the event of:

1846 **a. City Payment Default**

1847 In the occurrence of a City Default for failure to make payments in accordance with Section
1848 14.02 Contractor shall give City Notice of termination, which shall be effective thirty days
1849 thereafter.

1850 **15.03 Contractor's Obligations Upon Termination or Expiration of**
1851 **Agreement**

1852 Prior to, and at, the end of the Term or in the event this Agreement is terminated for cause
1853 prior to the end of the Term, Contractor shall cooperate fully with City and any subsequent
1854 Facility operator that City designates to assure a smooth transition of Facility Operations and
1855 management.

1856 Contractor's cooperation shall include, but not be limited to, providing the following:

- 1857 • Promptly turn over all keys and security codes for access to property and operation of
1858 Facility.
- 1859 • Leave Facility intact and in maintained and operable condition, removing no Facility
1860 Property.
- 1861 • Vacate the Facility, removing all Contractor property not used in the Facility Operation
1862 and delivering possession of Facility, equipment, rolling stock, and transfer vehicles
1863 acquired by City, as directed by City.
- 1864 • Transfer to the City or at the City's request to the new operator, the rights to use any
1865 and all patents, licenses, trade secrets, or other intellectual property necessary for
1866 Facility Operation.
- 1867 • Transfer to the City or at the City's request to the new operator, any and all
1868 maintenance and supply contracts and Recovered Materials sales contracts which are
1869 specific to the Facility.
- 1870 • Deliver possession of any proprietary components needed for Facility Operation to the
1871 City or at the City's request to the new operator.

- 1872 • Provide thirty (30) days of training of such personnel designated by the City as may
 1873 reasonably be necessary to enable the City or new operator to continue with Facility
 1874 Operation.
- 1875 • Provide the City or at the City's request to the new operator, non-technical and
 1876 technical design, construction and Facility Operation information, whether or not
 1877 proprietary, including the Operations and Maintenance Manual, technical specifications,
 1878 and as-built plans of the Processing system and assign or provide any other license or
 1879 consent which is necessary for the Facility Operation.
- 1880 • Provide the City or at the City's request to the new operator Customer Billing
 1881 information.
- 1882 • Transfer to City or at the City's request the new operator up-to-date maintenance
 1883 records.
- 1884 • Provide the City or at the City's request to the new operator other operating records
 1885 needed to provide all services covered by this Agreement.
- 1886 • Pay City any compensatory damages or liquidated damages, accrued and payable during
 1887 the Term which would have otherwise become payable. Contractor's liability for such
 1888 payments shall survive the termination of this Agreement.
- 1889 • Pay all taxes due to appropriate parties including, but not limited to, State, County, and
 1890 local agencies.
- 1891 • Transfer by Contractor to the City of all work in process.
- 1892 • Delivery of functional equipment, machinery, and rolling stock to the City or new
 1893 operator if the City exercises its right to acquire such equipment.
- 1894 • Delivery of clean and functional Facility.
- 1895 • Payment of any amounts due and owing by either Party to the other Party.
- 1896 The failure to cooperate with City following expiration of the Term or early termination shall be
 1897 conclusively presumed to be grounds for specific performance of this covenant and/or other
 1898 equitable relief necessary to enforce this covenant.

1899 **15.04 City Right to Perform**

1900 If City suspends or terminates this Agreement or any portion of Contractor's Performance
 1901 Obligations due to a Contractor Default, City may perform, or contract for the performance of,
 1902 any or all of Contractor's Performance Obligations. If City's performance costs, including
 1903 procurement of labor, equipment and materials and all other expenses necessary to perform
 1904 such Performance Obligations but excluding any damages paid in accordance with Section
 1905 14.01, exceed the amounts which would have been payable to Contractor hereunder had
 1906 Contractor fully performed, then Contractor shall pay the amount of such excess to the City.

1907

ARTICLE 16. DISPUTE RESOLUTION

1908

16.01 Independent Engineer.

1909

a. Selection

1910 As of the date hereof, the Independent Engineer is R.W. Beck & Company. In the event either
1911 party wishes to select an Independent Engineer, each Party shall prepare a separate list of five
1912 independent engineers having experience in the operation of transfer stations, material
1913 recovery facilities and yard waste processing facilities, in numerical order with the first
1914 preference at the top, and exchange and compare lists. The independent engineer ranking
1915 highest on the two lists by having the lowest total rank order position on the two lists shall be
1916 the Independent Engineer. In case of a tie in scores, the Independent Engineer having the
1917 smallest difference between the rankings of the two parties shall be selected; other ties shall be
1918 determined by a coin toss. If no independent engineer appears on both lists, this procedure
1919 shall be repeated. If selection is not completed after the exchange of three lists or sixty days,
1920 whichever comes first, then each Party shall select one independent engineer having
1921 experience described above and the two engineers so selected shall together select an
1922 Independent Engineer.

1923

b. Costs

1924 Parties shall pay the costs of the Independent Engineer in accordance with the provisions
1925 hereof; provided, that if no provision is specifically made, the Parties shall share the costs of the
1926 Independent Engineer equally for the first three arbitrations or mediations brought in any
1927 Contract Year, and thereafter shall be borne by the loser, as determined by the Independent
1928 Engineer.

1929

c. Non-Binding Arbitration for Specified Disputes Only.

1930

(1) Notices.

1931 Following the Parties mutual good faith efforts to resolve disputes listed in this paragraph
1932 below for a period of no less than thirty days, the Parties shall each give the Independent
1933 Engineer Notice detailing the dispute together with a written statement of each Party's position
1934 thereon. Parties shall simultaneously exchange copies thereof. The determination of the
1935 Independent Engineer with respect to these specific disputes shall be non-binding:

1936

(i) City approval of Operations and Maintenance Manual in accordance with Exhibit
1937 4.01;

1938

(ii) Adjustments in the Materials Recovery Guaranty in accordance with Section
1939 6.01;

1940

(iii) With respect to damages in accordance with Section 13.10c;

1941 (iv) Any other disputes which both Parties agree to submit to the Independent
1942 Engineer for determination;

1943 (v) With respect to Change Orders occasioned by Uncontrollable Circumstances in
1944 accordance with Section 21.02; and

1945 (vi) With respect to Contractor Default in accordance with Section 14.01a and City
1946 Default in accordance with Section 14.01b.

1947 Both Parties shall, in good faith and in writing, promptly provide the Independent Engineer with
1948 any and all information and documentation the Independent Engineer requires or requests in
1949 order to make its determination. Each Party shall simultaneously provide the other Party with
1950 copies thereof. Neither Party shall communicate orally with the Independent Engineer unless
1951 the other Party is privy thereto. Neither Party shall communicate in writing with the
1952 Independent Engineer unless it simultaneously sends copies of such communication to the
1953 other Party, in the same manner that it sends such communication to the Independent
1954 Engineer.

1955 (2) Determination.

1956 The Independent Engineer shall make its determination based on the submissions of the
1957 Parties, the provisions hereof, and other factual determinations it may make regarding the
1958 matter in dispute. Such determination with respect to items (i), (iii), and (iv) shall be binding
1959 unless:

1960 (i) the amount claimed by Contractor minus the amount determined by the
1961 Independent Engineer exceeds the sum which allows the City to terminate in the event
1962 of an Uncontrollable Circumstance in accordance with Section 19.01f, in which event the
1963 Contractor may terminate the Agreement without penalty in accordance with Section
1964 15.02, or

1965 (ii) the amount claimed by City minus the amount determined by the Independent
1966 Engineer exceeds the sum which allows the City to terminate in the event of an
1967 Uncontrollable Circumstance in accordance with Section 15.01f, in which event the City
1968 may terminate the Agreement without penalty in accordance with Section 15.01a.

1969 Such determination with respect to item (ii) shall not be binding, and either Party may reject it
1970 and terminate the Agreement in accordance with Article 6. Such determination with respect to
1971 item (v) shall not be binding and either Party may reject such determination and request
1972 arbitration in accordance with Section 16.01 or alternate dispute resolution in accordance with
1973 Section 16.02. Such determination with respect to item (vi) shall not be binding and either Party
1974 may reject such determination and exercise other remedies in accordance with Section 14.03.

1975 **d. Mediation.**

1976 Either Party may give the other Notice requesting advice and mediation by the Independent
1977 Engineer of any disputes between the Parties hereunder, including Service Fee disputes in
1978 accordance with Section 13.10. If the Party receiving the Notice agrees to mediation, it will give
1979 Notice specifying a date and location for a meeting of the Parties together with the
1980 Independent Engineer. The Parties shall not be bound by such mediation. Parties shall follow
1981 the same protocol as provided in the last paragraph of subsection c(1) above.

1982 **16.02 Non-binding Arbitration by Independent Arbitrator**1983 **a. Selection**

1984 In the event of any dispute arising between the City and Contractor, if either party wishes to
1985 select an arbitrator, each Party shall prepare a separate list of five independent arbitrators
1986 having experience in the operation of transfer stations, material recovery facilities and yard
1987 waste processing facilities, in numerical order with the first preference at the top, and exchange
1988 and compare lists. The independent arbitrator ranking highest on the two lists by having the
1989 lowest total rank order position on the two lists shall be the Independent Arbitrator. In case of
1990 a tie in scores, the Independent Arbitrator having the smallest difference between the rankings
1991 of the two parties shall be selected; other ties shall be determined by a coin toss. If no
1992 independent arbitrator appears on both lists, this procedure shall be repeated. If selection is
1993 not completed after the exchange of three lists or sixty days, whichever comes first, then each
1994 party shall select one independent arbitrator having experience described above and the two
1995 arbitrators so selected shall together select an Independent Arbitrator.

1996 **b. Costs**

1997 The Parties shall pay the costs of the Independent Arbitrator in accordance with the provisions
1998 hereof; provided, that if no provision is specifically made, the Parties shall share the costs of the
1999 Independent Arbitrator equally for the first three dispute resolutions brought through the Term
2000 of this Agreement, and thereafter shall be borne by the loser, as determined by the
2001 Independent Arbitrator.

2002 **c. Notices**

2003 Following the Parties mutual good faith efforts to resolve disputes, for a period of no less than
2004 thirty days, the Parties shall each give the Independent Arbitrator Notice detailing the dispute
2005 together with a written statement of each Party's position thereon. Parties shall simultaneously
2006 exchange copies thereof. Upon mutual consent of the Parties, the determination of the
2007 Independent Arbitrator shall be binding.

2008 Both Parties shall, in good faith and in writing, promptly provide the Independent Arbitrator
2009 with any and all information and documentation the Independent Arbitrator requires or
2010 requests in order to make its determination. Each Party shall simultaneously provide the other
2011 Party with copies thereof. Neither Party shall communicate orally with the Independent
2012 Arbitrator unless the other Party is privy thereto. Neither Party shall communicate in writing

2013 with the Independent Arbitrator unless it simultaneously sends copies of such communication
2014 to the other Party, in the same manner that it sends such communication to the Independent
2015 Arbitrator.

2016 **d. Determination**

2017 The Independent Arbitrator shall make its determination based on the submissions of the
2018 Parties, the provisions hereof, and other factual determinations it may make regarding the
2019 matter in dispute. If the Parties have not previously agreed that the determination of the
2020 Independent Arbitrator is binding, either Party may promptly request alternative dispute
2021 resolution in accordance with Section 16.03.

2022 **16.03 Alternative Dispute Resolution**

2023 Following a determination by the Independent Arbitrator, unless the Parties shall have mutually
2024 agreed that such determination is binding, either Party may request an appeal for a non-
2025 binding determination de novo by a retired judge, including Alternative Resolutions Centers
2026 (A.R.C.) and JAMS/End dispute, pursuant to standard alternative dispute resolution procedures.

2027 If (1) the amount claimed by Contractor *minus* the amount determined by the Independent
2028 Arbitrator exceeds the sum which allows the City to terminate in the event of an Uncontrollable
2029 Circumstance in accordance with Section 19.01f, then the Contractor may terminate the
2030 Agreement without penalty in accordance with Section 15.02, or (2) the amount claimed by City
2031 *minus* the amount determined by the Independent Arbitrator exceeds the sum which allows
2032 the City to terminate in the event of an Uncontrollable Circumstance in accordance with
2033 Section 19.01f, then the City may terminate the Agreement without penalty in accordance with
2034 Section 15.01.

2035 **16.04 Parties' Obligations During Pendency of Dispute**

2036 During the pendency of any dispute hereunder, the Parties shall perform their respective
2037 obligations hereunder.

2038

ARTICLE 17. THE PARTIES

2039

17.01 Contractor Is Independent Contractor

2040 The parties intend that Contractor shall perform the services required by this Agreement as an
2041 independent contractor engaged by City and not as an officer or employee of City nor as a
2042 partner of or joint venturer with City. No employee or agent of Contractor shall be deemed to
2043 be an employee of City, nor an agent of City, except for Marketing. Contractor shall have the
2044 exclusive control over the manner and means of performing Facility Operations, except for
2045 City's right to change the scope of Facility Operations in accordance with Article 21 and direct
2046 the sales of Recovered Materials in accordance with Section 9.02e. Contractor shall be solely
2047 responsible for the acts and omissions of its officers, employees, subcontractors and agents.
2048 Neither Contractor nor its officers, employees, subcontractors and agents shall obtain any
2049 rights to retirement benefits, workers compensation benefits, or any other benefits which
2050 accrue to City employees.

2051

17.02 Parties in Interest

2052 Nothing in this Agreement, whether express or implied, is intended to confer any rights on any
2053 Persons other than the Parties and their representatives, successors and permitted assigns.

2054

17.03 Binding on Successors

2055 The provisions of this Agreement shall inure to the benefit of and be binding on the successors
2056 and permitted assigns of the Parties.

2057

17.04 Further Assurances

2058 Each Party agrees to execute and deliver any instruments and to perform any acts as may be
2059 necessary or reasonably requested by the other in order to give full effect to this Agreement.

2060

17.05 Actions of the City in Its Governmental Capacity

2061 Nothing herein shall be interpreted as limiting the rights and obligations of the City in its
2062 governmental or regulatory capacity.

2063

17.06 Contractor's Obligations Performed at Its Sole Expense

2064 As compensation for performing its Performance Obligations, Contractor shall perform its
2065 Performance Obligations for the compensation expressly provided for herein.

2066

17.07 Exercise of Options

2067 Except as otherwise provided, the Parties' exercise of any approval, disapproval, option,
2068 discretion, election or choice hereunder shall be in each respective Party's independent, sole,
2069 exclusive and absolute control and judgment; unless this Agreement specifically provides that
2070 such exercise must be reasonable, including City's approval of subcontractors in accordance
2071 with Section 4.06, Contractor's determination and City's approval of rules regarding Permitted

2072 Users' use of the Facility in accordance with Section 4.15, and City determination of financial
2073 capability and Contractor's consent to City's assignment in accordance with Section 18.01.

2074 **17.08 Compliance with Applicable Law**

2075 The Contractor shall perform all its Performance Obligations hereunder, and shall cause its
2076 subcontractors to perform Performance Obligations hereunder, in accordance with Applicable
2077 Law and Permits.

2078 **17.09 Single Purpose Corporation**

2079 The Contractor shall not engage in any transactions or conduct any business affairs unrelated to
2080 the Facility and this Agreement and shall so certify annually on each July 1.

2001

ARTICLE 18. ASSIGNMENT AND AMENDMENTS**2082 18.01 Assignment****2083 a. Consent of the City Required**

2084 This Agreement shall not be transferred, sold, pledged, hypothecated, leased, or Assigned, nor
2085 shall any of the rights or privileges herein be transferred, sold, pledged, hypothecated, leased,
2086 or assigned, either in whole or in part, nor shall title hereto or thereto, either legal or equitable,
2087 or any right, interest or property herein or therein, pass to or vest in any Person, except the
2088 Contractor, either by action or inaction of the Contractor, or by operation of law, without the
2089 prior written consent of the City, which may be withheld or delayed in its sole and absolute
2090 discretion.

2091 The Contractor shall provide written notice of any request to assign or transfer this Agreement,
2092 and shall provide the City with any information requested by the City in connection with the
2093 proposed transfer, included but not limited to information regarding the general business
2094 qualifications of the proposed Assignee, as well as its ability to perform the Collection Services
2095 and a statement of its financial resources. The Contractor's notice of intention to assign this
2096 Agreement shall contain a statement of the allocation of dollars in the consideration to be paid
2097 by the Assignee to the Contractor for (a) goodwill, (b) equipment, and (c) any other asset
2098 transfer which has any connection with said Assignment, all as agreed upon by the Contractor
2099 and the assignee. The notice shall also contain a statement showing the method of payment for
2100 the consideration and whether the Contractor proposes to hold some security interest as
2101 security for the payment of the unpaid balance of the consideration.

2102 b. City Assignment

2103 The City may assign this Agreement to a sanitation district or other public entity succeeding to
2104 the major portion of the City's solid waste management rights and obligations if in the exercise
2105 of reasonable judgment, the City determines that such assignee is financially capable of
2106 meeting the City's obligations hereunder. The City may assign this Agreement to any other
2107 Person upon consent of the Contractor, which shall not unreasonably be denied.

2108 c. Contractor Assignment

2109 Contractor shall not assign its rights or delegate or otherwise transfer its obligations hereunder
2110 to any other Person without the prior consent of City. Any such assignment made without the
2111 consent of City shall be void. Contractor shall submit its request for City consent to the City
2112 together with the following documentation and any other documentation the City may request:

- 2113 1. Audited financial statement for the immediately preceding three operating years; indicating
2114 that in the opinion of the City the proposed assignee's financial status is equal to or greater
2115 than Contractor's.

2116 2. Satisfactory proof that the proposed assignee has at least ten years of municipal solid waste
 2117 management experience on a scale equal to or exceeding the scale of operations conducted
 2118 by Contractor.

2119 3. Satisfactory proof that in the last five years, the proposed assignee has not suffered any
 2120 citations or other censure from any federal, state or local agency having jurisdiction over its
 2121 waste management operations due to any significant failure to comply with state, federal or
 2122 local waste management law and that the assignee has provided City with a complete list of
 2123 such citations and censures.

2124 4. Satisfactory proof that the proposed assignee has at all times conducted its operations in an
 2125 environmentally safe and conscientious fashion.

2126 5. Satisfactory proof that the proposed assignee conducts its municipal solid waste
 2127 management practices in accordance with sound waste management practices in full
 2128 compliance with all federal, state and local laws regulating the collection and disposal of
 2129 waste, including hazardous waste as identified in Title 22 of the California Code of
 2130 Regulations.

2131 6. Of any other information required by City to ensure the proposed assignee can fulfill the
 2132 terms hereof, including the payment of damages, in a timely, safe and effective manner.

2133 Contractor shall undertake to pay City its reasonable expenses for attorneys' fees and
 2134 investigation costs necessary to investigate the suitability of any proposed assignee, and to
 2135 review and finalize any documentation required as a condition for approving any such
 2136 assignment.

2137 **d. Assign**

2138 For the purpose of this Section, "assign" includes:

2139 1. To sell, exchange or otherwise transfer to a third party any of Contractor's assets dedicated
 2140 to Performance Obligations.

2141 2. Issuing new stock or selling, exchanging or otherwise transferring thirty percent or more of
 2142 the then outstanding common stock of Contractor to a Person other than the shareholders
 2143 owning said stock as of the date hereof.

2144 **18.02 Amendments**

2145 **a. By Agreement**

2146 The Parties may change, modify, supplement or amend this Agreement only upon mutual
 2147 written agreement duly authorized and executed by both Parties.

2148 **b. City Manager May Act as Authorized Representative**

2149 Authority to act on behalf of the City is hereby delegated to the City Manager or his or her
 2150 designee under the following Articles or Sections of this Agreement: Section 1.01 Definitions;
 2151 Article 4 General Facility Operations; Article 5 Transfer Station; Article 6 MRF Operations;

2152 Article 7 Buy-Back Dropoff Center; Article 8 Recyclable Household Hazardous Waste Collection
2153 Area; Article 9 Marketing; Article 10 Transportation; Section 11.01 Insurance; Section 11.04
2154 Fidelity Bond; Section 11.06 Bond Trustee as Additional Obligee; Article 13 Service Fee;
2155 Section 15.01b Suspension Events; Section 15.01c Notice; Section 15.04 City Right to Perform;
2156 Article 16 Dispute Resolution; Article 19 Uncontrollable Circumstances; Article 20 Escalation;
2157 and Article 21 Change Orders.

2158 **ARTICLE 19. UNCONTROLLABLE CIRCUMSTANCES**2159 **19.01 Uncontrollable Circumstances**2160 **a. Uncontrollable Circumstance**

2161 Uncontrollable Circumstance(s) are defined in Exhibit 1.01.

2162 **b. Performance Excused**

2163 Neither party shall be deemed in breach or default of its duties, obligations (other than a
2164 payment obligation), responsibilities, commitments or, with respect to the Contractor,
2165 Performance Guaranties hereunder to the extent that such breach or default is due to an
2166 Uncontrollable Circumstance, provided such Party exerted Reasonable Business Efforts to
2167 prevent the occurrence and mitigate the effects of such Uncontrollable Circumstance. By way
2168 of illustration, such duties, obligations, responsibilities and commitments which will be excused
2169 to the extent necessary to reflect the occurrence of one or more Uncontrollable Circumstances
2170 include Facility Throughput Guaranty in accordance with Section 4.07, Performance Obligations
2171 with respect to Facility Operations in accordance with Section 4.14, Vehicle Turnaround
2172 Guaranty in accordance with Section 5.02; and the Materials Recovery Guaranty in accordance
2173 with Section 6.01.

2174 Neither Party shall be excused from a payment obligation in the event of an Uncontrollable
2175 Circumstance, except that upon the occurrence of any Uncontrollable Circumstance which
2176 directly prevents the City or any other Permitted User from Delivering Permitted Waste that
2177 would otherwise be Delivered to the Facility (calculated on a daily basis), the Contractor agrees
2178 to use its Reasonable Business Efforts to reduce costs and expenses related to such
2179 Uncontrollable Circumstance, and the City may elect to pay the Contractor's Direct Cost and
2180 Indirect Cost of operating the Facility during the continuance of such Uncontrollable
2181 Circumstance, in lieu of the Service Fee, subject to the City's right to terminate the Agreement
2182 as provided in subsection f below.

2183 **c. Notice**

2184 The Party experiencing an Uncontrollable Circumstance and relying thereon shall give
2185 immediate Notice thereof to the other Party, including describing performance hereunder for
2186 which it seeks to be excused; the expected duration of the Uncontrollable Circumstance; the
2187 extent deliveries of Permitted Waste may be curtailed; any requests or suggestions to mitigate
2188 the adverse effects of such Uncontrollable Circumstance; any Change Order; any adjustment of
2189 the Service Fee; or any modification of Performance Guaranties. If the Parties cannot agree
2190 upon such matters, either Party may seek dispute resolution in accordance with Article 16.

2191 **d. Change Orders**

2192 In the event of an Uncontrollable Circumstance which does not justify termination of this
2193 Agreement by the City in accordance with subsection f, below, but which the Parties agree or
2194 which the Independent Arbitrator or alternative dispute resolver has determined requires a

2195 Change Order, then at any time on or before the end of one year following the occurrence of
2196 such Uncontrollable Circumstance, City shall solicit bids in Accordance with Applicable Law,
2197 including public bidding law, to implement a Change Order and remedy the effects of such
2198 Uncontrollable Circumstance, in accordance with the procedures for implementing Change
2199 Orders in Article 21.

2200 Upon City request the Contractor will use best efforts to finance costs of such Change Order in
2201 amounts up to three hundred and seventy four thousand thirty five dollars (\$374,035) which
2202 City will reimburse as soon as it can practicably issue Municipal Obligations or otherwise raise
2203 the necessary amount, but in no event later than twelve months after Contractor advances
2204 such amount.

2205 **e. Service Fee**

2206 During such one year period Contractor shall use Reasonable Business Efforts to reduce its costs
2207 of Facility Operation and the Service Fee shall be adjusted to reflect the Direct Costs of such
2208 reduction.

2209 **f. Fee Increase; Termination**

2210 City will pay Contractor as part of the Service Fee any Contractor's Direct Costs, without Profit,
2211 of increases in Facility Operations for a period up to two weeks following the occurrence of an
2212 Uncontrollable Circumstance and thereafter, pursuant to a Change Order, subject to the City's
2213 right to terminate the Agreement in accordance with the following paragraph.

2214 If one or more Uncontrollable Circumstances result in an increase of City Costs, over the
2215 remaining Term of the Agreement, greater than twenty-five percent (25%) of the City Costs
2216 then in effect, then the City may terminate this Agreement in accordance with Section 15.01a.
2217 "City Costs" means the sum of (i) the Service Fee plus (ii) debt service on Municipal Obligations,
2218 plus (iii) the cost of capital improvements to the Facility amortized over the remaining Term.

2219 ARTICLE 20. ESCALATION**2220 20.01 Escalation**

2221 All monetary amounts in this Agreement shall be subject to escalation commencing February 1,
2222 2013 if and when such amounts are due and payable except for amounts which are not stated
2223 numerically as of the date hereof but are measured by actual or Direct Costs. Monetary
2224 amounts subject to escalation shall include damages for breach of Vehicle Turnaround
2225 Guaranty in accordance with Section 5.02, the costs Contractor must pay with respect to
2226 inadvertently accepted Unpermitted Waste in accordance with Section 5.01d, the Recovered
2227 Materials Haul Fee in accordance with Section 10.01c, the base amount of insurance premiums
2228 in accordance with Section 11.01a, the Base MRF Fee in accordance with Section 13.02a, the
2229 Base Facility Fee in accordance with Section 13.02b, the Excess MRF Tonnage Fee in accordance
2230 with Section 13.03a, the Excess Facility Tonnage Fee in accordance with Section 13.03b, the
2231 Transfer Haul Fee in accordance with Section 13.04, and the amount of money Contractor will
2232 use best efforts to finance Change Orders in events of Uncontrollable Circumstances in
2233 accordance with Section 19.01d. Such escalation shall be calculated by computing the
2234 percentage change in the CPI Index on each February 1 during the Term of the Agreement, from
2235 the index level as of the date hereof, which was 231.303 (July 2011), and multiplying the
2236 applicable amount to be escalated by one plus such percentage change: $1 + [\text{current year CPI}$
2237 $\text{Index} - \text{base year CPI Index}] / \text{base year CPI}$.

2238 CPI Index means the Los Angeles-Long Beach-Anaheim Metropolitan Area Consumer Price
2239 Index CPI-U (All Urban Consumers; 1982-84 = 100) compiled and published by the United States
2240 Department of Labor, Bureau of Labor Statistics.

2241

ARTICLE 21. CHANGE ORDERS

2242

21.01 Change Orders

2243

a. Upon City Direction

2244 The City may direct a Change Order to the scope of Facility Operations, at any time, for any
2245 reason whatsoever, subject to adjustments, if any, on the Effective Date, Performance
2246 Guaranties and/or Service Fee. The Contractor acknowledges that the City must comply with
2247 Applicable Law with respect to equipment acquisition, including public bidding laws.

2248

b. Upon Contractor Proposal

2249 The Contractor may propose to the City in writing a Change Order, changing the scope of
2250 Facility Operations for any reason, including Uncontrollable Circumstances.

2251

21.02 Review and Comment

2252

a. Proposals

2253

(1) City's Request for Proposal

2254 Prior to directing a Change Order the City shall submit a request for proposal to the Contractor,
2255 including plans and specifications, as applicable. The City may withdraw such request for
2256 proposal at any time, for any reason, including receipt of a proposal from Contractor
2257 unsatisfactory to the City.

2258

(2) Contractor's Proposal

2259 Within ten Working Days of receiving the City's request for proposal (or such longer period as
2260 may be reasonably necessary to respond in light of the complexity or magnitude of the Change
2261 Order requested by the City) or in conjunction with its own proposal, the Contractor may
2262 comment on a City proposal and shall submit its plan to implement such changes or
2263 improvements, including an implementation schedule and the impact, if any, on the
2264 Performance Guaranties and/or Service Fee; provided that if Contractor submits its own
2265 proposal absent Uncontrollable Circumstances, it shall implement its proposal at its own cost,
2266 without any adjustment in the Performance Guaranties and/or Service Fee. Contractor shall
2267 include documentation supporting its cost proposal, including cost substantiation required with
2268 respect to Direct Costs and Indirect Costs. Contractor covenants that it will not propose a Direct
2269 Cost in excess of the fair market price for such Change Order whether it implements such
2270 Change Order itself or through a subcontractor. If it proposes to implement such Change Order
2271 itself, it shall charge no more than a five percent (5%) margin over Direct Costs, if any. Such
2272 proposal shall be deemed the Contractor's offer to the City to implement the Change Order in
2273 accordance with the terms of such proposal. Such proposal shall be binding for thirty days.

2274

City may reject Contractor's proposal unless such proposal is consequent upon an

2275

Uncontrollable Circumstance, in which event Contractor may request dispute resolution in

2276 accordance with Section 16.02 to resolve the price and determine whether it exceeds the
2277 termination amount provided in Section 19.01f.

2278 **b. City's Review of Proposal**

2279 Within twenty Working Days of receiving the Contractor's proposal, the City shall review,
2280 approve, or disapprove such proposal and comment thereon. If the City does not respond
2281 within such time, its approval will be deemed not given. Contractor shall incorporate the City's
2282 comments promptly, but in all events within fifteen Working Days; provided, that if Contractor
2283 disagrees with City's comments and Contractor and City cannot reach agreement during such
2284 fifteen Working Day period, the Parties shall submit the matter to the Independent Arbitrator
2285 for determination in accordance with Section 16.02.

2286 **c. Issuance of Change Order**

2287 Upon City direction or determination of the Independent Arbitrator, such proposal shall
2288 constitute a Change Order deemed issued by the City hereunder.

2289 **21.03 Contractor's Implementation of Change Order**

2290 Upon issuance of a Change Order pursuant to Section 21.02c, the Contractor shall diligently
2291 perform such work in accordance with the schedule in its proposal and for the price provided
2292 therein or, if the Parties disagree on the price, in the amount decided pursuant to a binding
2293 dispute resolution in accordance with Section 16.02. The Contractor shall not be entitled to any
2294 compensation for implementing Change Orders occasioned by its failure to perform its
2295 Performance Obligations unless due to an Uncontrollable Circumstance, but otherwise shall be
2296 entitled to the compensation determined by agreement of the Parties or conclusion of dispute
2297 resolution.

2298

ARTICLE 22. NOTICES, CONSENTS, APPROVALS, ETC.

2299

22.01 Notices, etc.

2300

All demands, directions, selections, option exercises, orders, requests, proposals, comments,

2301

acknowledgments, approvals, consents, certifications and other communications made

2302

hereunder shall be in writing and shall either be personally delivered to a representative of the

2303

Parties at the address below or be deposited in the United States mail, first class postage

2304

prepaid (certified mail, return receipt requested), addressed as follows:

2305

If to City: City Manager (or his designee)

2306

300 West Third Street

2307

Oxnard, CA 93030

2308

2309

If to Contractor: Consolidated Disposal Services, LLC

2310

Republic Services of Oxnard

2311

Attn: Area President

2312

12949 Telegraph Road

2313

Santa Fe Springs, CA 90670

2314

2315

With a copy to: Republic Services of Oxnard

2316

Attn: General Manager

2317

111 South Del Norte Blvd.

2318

Oxnard, CA 93030

2319

2320

With an Additional

2321

Copy to; Republic Services, Inc.

2322

Attn: Vice President & Deputy General Counsel,

2323

Western Region

2324

18500 North Allied Way

2325

Phoenix, AZ 85054

2326

2327

2328

The address to which communications may be delivered may be changed from time to time by

2329

a Notice given in accordance with this Section.

2330

22.02 Due Diligence

2331

Parties acknowledge that the City may be subject to statutory fines for failure to achieve

2332

mandated diversion levels and that waste management is a public health and safety concern.

2333

Parties agree that each shall exercise due diligence in the performance of any of the terms and

2334

conditions of this Agreement.

2335 **22.03 Authority to Execute**

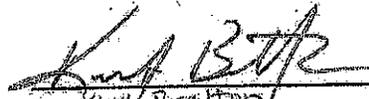
2336 City warrants that the Mayor, City Clerk, City Attorney and Public Works Director of have been
2337 duly authorized by the City Council to execute this Agreement on behalf of the City. Contractor
2338 warrants that the person executing this Agreement has been duly authorized by Contractor to
2339 do so on behalf of Contractor.

2340 IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the latter of the
2341 date written below,

2342
2343 THE CITY OF OXNARD

CONTRACTOR
BLT Enterprises of Oxnard, Inc. doing
business as Republic Services of Oxnard

2344
2345
2346
2347
2348 _____
2349 Dr. Thomas E. Holden, Mayor


By: Kurt Braithorn
Its: VP

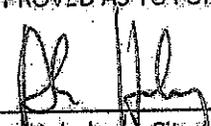
2350
2351
2352 ATTEST:

APPROVED AS TO INSURANCE:

2353
2354
2355 _____
2356 Daniel Martinez, City Clerk


James Cameron, Risk Manager

2357
2358 APPROVED AS TO FORM:

2359
2360 
2361 _____
2362 Alan Holmberg, City Attorney

APPROVED

City Manager

2363
2364
2365 APPROVED AS TO CONTENT:

2366
2367 
2368 _____
2369 Rob Roshanian, Interim Public Works Director

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EXHIBIT 1.01

DEFINITIONS

Agreement means this Agreement, including all exhibits and attachments which are incorporated herein by reference, as this Agreement may be amended and supplemented pursuant to Section 18.02.

Annual Facility Throughput Guaranty is defined in Section 4.07.

Applicable Law means all law, statutes, rules, regulations, guidelines, Permits, actions, determinations, orders, or requirements of the United States, State, County of Ventura, City, regional or local government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that from time to time apply to or govern the Facility, the Site or the performance of the Parties' respective obligations hereunder, including any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation monitoring plans, building codes, zoning, non-discrimination, the payment of minimum wages and the Ventura County Integrated Waste Management Plan.

Avoided Disposal Cost means the Transfer Haul Fee the City would have paid Contractor to transport such Ton to the Designated Disposal Facility plus the tipping fee the City would have paid for such Ton at the Designated Disposal Facility (defined in Section 13.05).

Base Facility Fee is defined in Article 13.

Base Facility Tonnage is defined in Article 13

Base MRF Fee is defined in Section Article 13

Building is described and marked on the plans and specifications attached to Exhibit 4.02 of the original Materials Recovery Facility Design, Construction & Equipping Management and Operations Agreement dated May 23, 1995 ("Plans and Specifications").

Buyback/Dropoff Center, is described and marked in the Plans and Specifications.

Buyback/Dropoff Center Receiving Hours, when Contractor must accept Source Separated Recyclable Materials at the Buyback/Dropoff Center, are defined in Section 4.01.

Change in Law means the occurrence of any event or change in Applicable Law as follows:

1. The adoption, promulgation, modification, or change in judicial or administrative interpretation occurring after the date hereof which adoption, promulgation, codification, or change in judicial or administrative interpretation relates to any Applicable Law, other than laws with respect to taxes based on or measured by net income, or any

unincorporated business, payroll, franchise taxes levied by any tax board (other than franchise fees levied by the City) or employment taxes; or

2. Any order or judgment of any federal, state or local court, administrative agency or governmental body issued after the date hereof if:
 - i. such order or judgment is not also the result of the willful misconduct or negligent action or inaction of the Party relying thereon or of any third party for whom the Party relying thereon is directly responsible; and
 - ii. the Party relying thereon, unless excused in writing from so doing by the other Party, shall make or have made, or shall cause or have caused to be made, Reasonable Business Efforts in good faith to contest such order or judgment (it being understood that the contesting in good faith of such an order or judgment shall not constitute or be construed as a willful misconduct or negligent action of such Party); or
3. The imposition by a governmental authority or agency of any new or different material conditions in connection with the issuance, renewal, or modification of any Permit after the date hereof; or
4. The failure of a governmental authority or agency to issue or renew, or delay in the issuance or renewal of, or the suspension, interruption or termination of, any Permit after the date hereof; provided such failure to issue or the suspension or termination of any Permit is not the result of the willful misconduct or negligent action or inaction of the Party relying thereon or any third party for whom the Party relying thereon is directly responsible.

"Change in Law" shall include the payment of prevailing wages during Facility Operation or other similar laws relating to the operation of the Facility.

Change Order means the changes in Plans and Specifications or scope of Facility Operations directed by City or proposed by Contractor in accordance with Article 21.

City means the City of Oxnard or any governmental entity which may hereinafter assume waste management obligations of the City, including any joint exercise of powers authority or other similar public entity with which the City participates or contracts with, established to provide solid waste management services.

City-Collected Waste means Permitted Waste collected by the City in City collection vehicles and delivered to the Facility.

Non-City Buyback Materials means Source Separated Recyclable Materials generated outside of the geographical boundaries of the City.

Non-City-Collected Waste means any Permitted Waste delivered to the Facility other than City-Collected Waste.

City Default is defined in Section 14.02.

Construction means that work which the City will publicly bid pursuant to Applicable Law, including public procurement statutes, for construction of the Building and Site development.

Construction and Demolition Debris means concrete, brick, wood and other rubble and debris resulting from construction and demolition of buildings and other improvements.

Contractor means BLT Enterprises of Oxnard, Inc. doing business as (dba) Republic Services of Oxnard.

Contractor Default is defined in Section 18.02a.

Contract Year means each year commencing February 1 and ending January 31.

Daily Facility Throughput Guaranty is defined in Section 4.07.

Delivered (or other forms thereof, including **Deliver** and **Delivery**) when used with respect to Permitted Waste, means Permitted Waste delivered to the Facility which Contractor may not reject for such enumerated reasons. (defined in Section 9.01b).

Designated Disposal Facilities, as of the date hereof, are Simi Valley Landfill, and Toland Road Landfill (named in Section 10.02).

Direct Costs means the sum of:

1. Payroll costs directly related to the performance, or management or supervision of any obligation pursuant to the provisions hereof, comprised of compensation and fringe benefits, including vacation, sick leave, holidays, retirement, Workers Compensation Insurance, federal and state unemployment taxes and all medical and health insurance benefits, plus
2. The costs of materials, services, direct rental costs and supplies, plus
3. Travel and subsistence costs, plus
4. The reasonable costs of any payments to subcontractors necessary to and in connection with the performance hereunder; plus
5. Any other cost or expense which is directly or normally associated with the task performed;

which Direct Costs are substantiated by (i) a certificate signed by the principal financial officer of the Contractor or the authorized representative of the City or his or her designee, as the case may be, setting forth the amount of such cost and the reason why such cost is properly chargeable to the City or the Contractor, as the case may be, and stating that such cost is an

arm's length and competitive price, if there are competitive prices, for the service or materials supplied; and (ii) if the City or the Contractor requests, as the case may be, such additional back-up documentation as may be available to reasonably substantiate any such Direct Cost, including invoices from suppliers and subcontractors.

Entry Scalehouse is the scalehouse described in the Plans and Specifications which the Contractor operates in accordance with Section 4.02.

Equipment Purchase Agreements means the agreements between the City and Equipment Vendors, providing for the purchase, installation and/or testing of Equipment, with warranties thereof, including any additional Equipment acquired in connection with an increased Facility Throughput Guaranty in accordance with Section 4.07.

Equipment Vendor or Vendors means the Person or Persons selling, installing and/or testing Equipment pursuant to an Equipment Purchase Agreement.

Equipping means that work which the City will publicly bid pursuant to Applicable Law, if so required, including public procurement statutes, for acquisition and installation of Equipment.

Excess Capacity Arrangements means any agreements or other City documentation, including established accounts, for solid waste transfer, Recovery and/or Processing between the City and each Permitted User, respectively, which the Parties contemplate will be negotiated by the Contractor and approved by the City in accordance with Section 4.15.

Excess Diversion Bonus is defined in Section 13.05.

Excess Tonnage Fee is defined in Section 13.03.

Facility means the Del Norte Regional Recycling and Transfer Station at 111 South Del Norte Boulevard, Oxnard, California, which is owned by the City of Oxnard, California, along with the Entry Scalehouse, Buyback/Dropoff Center, Recyclable Household Hazardous Waste Collection Area, administrative offices, Visitors Education Center and MRF, together with administrative offices and ancillary support facilities, furnishings and Equipment, and parking, signs, fencing and landscaping.

Facility Operation means all Contractor's Performance Obligations including operation and maintenance of the Facility in accordance with the provisions hereof, together with weighing and acceptance of Permitted Waste at the Transfer Station and Source Separated Recyclable Materials at the Buyback/Dropoff Center; Recovery, Processing, transferring and weighing Mixed Municipal Waste and Residue for disposal; transporting Mixed Municipal Waste and Residue to the Designated Disposal Site; marketing Recovered Materials, providing billing and collection services; transporting Recovered Materials to market, if transportation is not arranged by the purchaser; and procuring and maintaining insurance and bonds.

Facility Property means all assets (including but not limited to equipment, furnishings and fixtures listed in Exhibit 5.03) owned by City and used or useful at the Del Norte Regional Recycling and Transfer Station (including but not limited to its scalehouse, maintenance facility and offices), including, but not limited to, computer hardware, computer software (including, but not limited to CompuWeigh), office furniture and filing cabinets.

Facility Throughput Guaranty is defined in Section 4.07.

Hazardous Waste is a type of Unpermitted Waste which by reason of its quality, concentration, composition or physical, chemical or infectious characteristics may cause or significantly contribute to an increase in mortality or an increase in serious illness or pose a substantial threat or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise mismanaged; or any waste which is defined or regulated as a hazardous waste, toxic waste, hazardous chemical substance or mixture, or asbestos under Applicable Law, excluding Recyclable Household Hazardous Wastes but including:

1. "Hazardous Waste" pursuant to Section 40141 of the California Public Resources Code; regulated under Chapter 7.6 (commencing with Section 25800) of Division 20 of the California Health and Safety Code; all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by Sections 25110.02, 25115, and 25117 of the California Health and Safety Code (the California Hazardous Waste Control Act), California Health and Safety Code Section 25100 et seq., and future amendments to or recodification of such statutes or regulations promulgated thereunder, including 23 California Code of Regulations Sections 2521 and 2522; and
2. Materials regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., as amended (including, but not limited to, amendments thereto made by the Solid Waste Disposal Act Amendments of 1980), and related federal, State and local laws and regulations;
3. Materials regulated under the Toxic Substance Control Act, 15 U.S.C. Section 2601 et seq., as amended, and related federal, State of California, and local laws and regulations, including the California Toxic Substances Account Act, California Health and Safety Code Section 25300 et seq.;
4. Materials regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, et seq., as amended, and regulations promulgated thereunder; and
5. Materials regulated under any future additional or substitute federal, State or local laws and regulations pertaining to the identification, transportation, treatment, storage or disposal of toxic substances or hazardous waste.

If two or more governmental agencies having concurrent or overlapping jurisdiction over hazardous waste adopt conflicting definitions of "hazardous waste", for purposes of collection, transportation, processing and/or disposal, the broader, more restrictive definition shall be employed for purposes of this Agreement.

Independent Arbitrator is the Person chosen in accordance with such Section 16.03.

Independent Engineer is the engineer named in Section 16.01 or thereafter chosen in accordance with such Section 16.01.

Indirect Costs means overhead and general and administrative costs not included in Direct Costs reasonably allocable to the performance of the activities for which Direct Costs are being calculated.

Market or Marketing means all Performance Obligations of the Contractor listed in Section 9.02 with respect to marketing Recovered Materials.

Marketing Costs means those costs defined in Section 9.06.

Marketing Plan means the plan for Marketing Recovered Materials prepared by the Contractor in accordance with Section 9.01.

Materials Recovery Guaranty is defined in Section 6.01 and measured, with respect to Recovery, in accordance with Exhibit 7.01.

Mixed Municipal Waste is a type of Permitted Wastes comprised of residential, commercial and light industrial refuse, garbage and/or rubbish, other than Source Separated Recyclable Materials, Recyclable Waste, Recyclable Rich Waste, Source Separated Yard Waste and Construction and Demolition Debris.

Materials Recovery Facility is described in the Plans and Specifications, including lines to process Recyclable Waste, Recyclable Rich Waste and Source Separated Recyclable Materials, and provision for floor sorting or other method to Recover Source Separated Yard Waste and Construction and Demolition Debris.

Municipal Obligations means bonds, certificates of participation or other obligations issued, or caused to be issued by, the City to finance all or a portion of the costs of Facility Construction, Equipping and/or Facility Development and any additions, improvements, modifications or changes to the Facility thereafter.

Notice (or **Notify** or other variation thereof) means notice given in accordance with Section 22.01.

Operations and Maintenance Manual is described in Exhibit 4.01.

Party and Parties refers to the City and the Contractor, individually and together.

Performance Guaranties means the following guaranties made by the Contractor hereunder:

1. Facility Throughput Guaranty,
2. Vehicle Turnaround Guaranty defined in Section 5.02,
3. Materials Recovery Guaranty, and
4. Recovered Materials Quality Guaranty.

Performance Obligations means each and every obligation and liability of the Contractor hereunder, including Facility Development and Facility Operation.

Permits means all federal, State, City, Permitted User, other local and any other governmental unit permits, orders, licenses, approvals, authorizations, consents and entitlements of whatever kind and however described which are required under Applicable Law to be obtained or maintained by any person with respect to the Facility or the performance of any obligation hereunder or matters covered hereby, as renewed or amended from time to time.

Permitted User means the City, Selfhaulers and any other Person which or whom the City may add or thereafter delete by Notice to the Contractor, and which other Persons have established an account for billing with the City.

Permitted Waste means waste which the Facility may receive under its Permits and Applicable Law, including non-hazardous solid wastes consisting of:

1. Mixed Municipal Waste,
2. Source Separated Recyclable Materials,
3. Recyclable Waste,
4. Recyclable Rich Waste,
5. Source Separated Yard Waste, and
6. Construction and Demolition Debris.

Upon receipt of Permits, the Parties shall promptly conform this definition of "Permitted Waste" to the provisions thereof, if necessary, and shall thereafter promptly conform this definition to reflect any changes in Permits, which, if material, may constitute a Change in Law in accordance with the definition thereof.

Person includes any individual, firm, association, organization, partnership, corporation, trust, joint venture, the United States, the State, a county, a municipality or special purpose district or any other entity whatsoever.

Process (or **Processing**, or any other variation thereof) means baling, crushing, shredding, chipping, grinding, extracting, hand picking and any other method of processing Recovered Materials by Contractor after Recovery and before Marketing thereof.

Profit means an amount equal to 8% of the amount of Direct Costs relating to the activity for which Profit is being calculated.

Reasonable Business Efforts means those efforts a reasonably prudent business Person would expend under the same or similar circumstances in the exercise of such Person's business judgment, intending in good faith to take steps calculated to satisfy the obligation which such Person has undertaken to satisfy; provided that such Person and/or any enterprise by which such Person is employed would not incur a financial loss (other than time expended or unless otherwise compensated for such efforts herein) by reason of having expended or expending such efforts.

Recovered Materials means Recyclable Materials Recovered from Permitted Waste.

Recovered Materials Losses is defined in Section 9.06b.

Recovered Materials Profits is defined in Section 9.06.

Recovered Materials Haul Fee is defined in Section 10.01.

Recovered Materials Quality Guaranty is defined in Section 6.03.

Recovery (or **Recover** or **Recovered**, or other variations thereof) means the picking, pulling, sorting, separating, classifying and recovery of Recovered Materials from Permitted Waste, whether by manual or mechanical means, by the Contractor at the Facility, after Delivery and before Processing and Marketing thereof. Recovery of Recovered Material from Permitted Waste is measured in accordance with Exhibit 6.01.

Recyclable Household Hazardous Waste means automobile batteries, motor oils, anti-freeze, oil filters and water-based paint.

Recyclable Household Hazardous Waste Collection Area is described in the Plans and Specifications.

Recyclable Materials means the following listed materials which are Uncontaminated and of a size commonly recovered in comparable materials recovery facilities in California:

1. polyethylene terephthalate containers ("PET") marked "1" as of the date hereof

2. high density polyethylene containers ("HDPE") marked "2" as of the date hereof
3. low density polyethylene containers ("LDPE") marked "4" as of the date hereof
4. California redemption containers
5. unbroken glass containers
6. ferrous metals
7. non-ferrous metals
8. newspaper
9. corrugated cardboard
10. white paper
11. mixed paper
12. and such other materials collected in recycling programs in southern California.

Recyclable Rich Waste is a type of Permitted Waste, including Permitted Waste generated by commercial or industrial establishments, which is delivered in a load which contains 50% or more Recyclable Materials. An example of Recyclable Waste is Permitted Waste collected by Permitted Users on selective routes from commercial generators containing proportionately large concentrations of corrugated cardboard and paper and/or other Recyclable Materials in aggregate amounts at least equal to the required percentage.

Recyclable Waste is a type of Permitted Waste, including Permitted Waste generated by commercial or industrial establishments, which is delivered in a load which contains 25% or more Recyclable Materials.

Residue means Permitted Waste remaining after Recovery and Processing thereof.

Sales Revenues is defined in Section 9.06.

Selfhaulers means Persons Delivering Permitted Waste on their own behalf, and not as a commercial waste hauling enterprise, and any other Persons designated by the City, who pay cash.

Service Fee is defined in Section 13.01, as adjusted, escalated or offset.

Service Fee Invoice Date is defined in Section 13.10.

Service Fee Payment Date is defined in Section 13.10.

Source Separated Recyclable Materials is a type of Permitted Waste, including Permitted Waste generated by residences, which is delivered in a load which contains at least 85% Recyclable Materials. Examples of Source Separated Recyclable Materials include materials Delivered to the Facility by Permitted Users from curbside collection programs or by Selfhaulers to the Buyback/Dropoff Center.

Source Separated Yard Waste is a type of Permitted Waste, including fallen leaves, cut grass, tree trimmings, brush or other organic debris, that is segregated from other Mixed Municipal Waste prior to collection. Examples of Source Separated Yard Waste include materials Delivered to the Facility by Permitted Users from curbside collection programs or by Selfhaulers, including gardening and landscaping businesses.

State means the State of California.

Term of this Agreement has the meaning set forth in Section 3.01.

Ton (or Tonnage) means a short ton of 2,000 pounds avoirdupois.

Transfer Haul Fee is defined in Section 13.04.

Transfer Station is described in Section 4.01.

Transfer Station Receiving Hours are defined in Section 4.01.

Uncontaminated means materials are sufficiently free of oil, grease, chemicals, solvent, excessive food, water or other materials to enable such Recyclable Materials to be marketed; do not contain any foreign liquids or solid not originally packaged in such Recyclable Material; are not connected, nailed, glued, welded, crushed or otherwise joined with other materials such that it takes over twenty pounds of pull strength or the use of tools or instruments to separate; and are free of protruding nails or foreign objects which could result in the risk of injury to Contractor's employees.

Uncontrollable Circumstance(s) means any act, event or condition, whether affecting the Facility or either Party beyond the reasonable control of such Party and not the result of willful or negligent action or inaction of such Party (other than the contesting in good faith or the failure in good faith to contest such action or inaction), which materially and adversely affects the ability of either Party to perform any obligation hereunder, including:

1. an act of God, landslide, lightning, earthquake, fire, flood, (other than reasonably anticipated weather conditions for the geographic area of the Facility), explosion, sabotage, acts of a public enemy, war, blockade or insurrection, riot or civil disturbance;
2. the failure of any appropriate federal, State, City, or local public agency or private utility having operational jurisdiction in the area in which the Facility is located, to provide and

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maintain utilities, services, water, sewer or power transmission lines to the Facility which are required for Facility Development or Facility Operation;

3. a Change in Law other than Changes in Law excluded in items 10.2 and 10.6 below;
4. the failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to if such failure is caused by an Uncontrollable Circumstance and the affected Party is not reasonably able to obtain substitute labor, services, materials or equipment on the agreed upon dates;
5. failure of any Person providing transfer services in accordance with Section 10.6 to provide such services in a timely manner;
6. strikes, work stoppages or other labor disputes or disturbances of any Person performing services related to Facility Development or Facility Operation if the affected Party has bargained in good faith (in circumstances in which the affected Party is a party to the bargaining effort) and is not reasonably able to obtain substitute labor, services, materials or equipment when required;
7. the presence at the Site of any subsurface or geotechnical conditions not identified in (i) the Limited Soil Quantity Investigation for Ventura County Recycling/Transfer Facility, Ventura County, California, drafted by Kleinfelder, Inc. and dated October 8, 1993, and (ii) geotechnical report by Kleinfelder, Inc., of the same date, including:
 - i. subsurface structures, materials or conditions having archeological significance;
 - ii. any habitat of endangered species; and
 - iii. functioning or nonfunctioning subsurface structures used by utilities;
8. the delivery to or presence of Hazardous Waste upon, beneath or migrating to or from the Facility site;
9. any failure of title to the Site; any enforcement of any encumbrance on the Site or on any improvements thereon not consented to in writing by, or arising out of any action or agreement entered into by the Party adversely affected thereby; and
10. governmental pre-emption of materials or services in connection with a public emergency or condemnation or other taking by eminent domain of any portion of the Facility or the Site. In event of any condemnation, neither Party waives its rights to assert claims in such condemnation proceedings.

but excluding, without limitation:

1. either Party's own breach of its obligations hereunder;

2. adverse changes in the financial condition of either Party or any Change in Law with respect to any taxes based on or measured by net income, or any unincorporated business, payroll, franchise or employment taxes;
3. the consequences of errors in Facility Development or Facility Operation on the part of the Contractor, its employees, agents, subcontractor or affiliates, including errors in Plans and Specifications or the Operations and Maintenance Manual or failure to comply therewith;
4. the failure of the Contractor to secure patents, licenses, trademarks, and the like necessary for Facility Development or Facility Operation;
5. as to the Contractor, the failure of any Facility technology to perform in accordance with Performance Guaranties, unless caused by Uncontrollable Circumstances; and
6. with respect to the City, any Change in Law adopted by the City, unless such Change in Law is mandated by State, federal or other governmental agency law, regulation or directive.

Unpermitted Waste means wastes that the Facility may not receive under its Permits, including:

1. agricultural wastes comprised of animal manures;
2. asbestos, including friable materials that can be crumbled with pressure and are therefore likely to emit fibers, being a naturally occurring family of carcinogenic fibrous mineral substances, which may be a Hazardous Waste if it contains more than one percent asbestos;
3. ash residue from the incineration of solid wastes, including municipal waste, infectious waste described in item (8) below, wood waste, sludge, and agricultural wastes described in item (1) above;
4. auto shredder "fluff" consisting of upholstery, paint, plastics, and other non-metallic substances which remains after the shredding of automobiles;
5. large dead animals;
6. Hazardous Wastes, explosives, ordnance, highly flammable substances and noxious materials;
7. industrial solid or semi-solid wastes resulting from industrial processes and manufacturing operations, including cement kiln dust, ore process residues and grit or screenings removed from waste water treatment facility;
8. infectious wastes which have disease transmission potential and are classified as Hazardous Wastes by the State Department of Health Services, including pathological and surgical

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wastes, medical clinic wastes, wastes from biological laboratories, syringes, needles, blades, tubings, bottles, drugs, patient care items such as linen or personal or food service items from contaminated areas, chemicals, personal hygiene wastes, and carcasses used for medical purposes or with known infectious diseases;

9. liquid wastes which are not spadeable, usually containing less than fifty percent solids, including cannery and food processing wastes, landfill leachate and gas condensate, boiler blowdown water, grease trap pumpings, oil and geothermal field wastes, septic tank pumpings, rendering plant byproducts, sewage sludge, and those liquid wastes which may be Hazardous Wastes;
10. radioactive wastes under Chapter 7.6 (commencing with Section 25800) of Division 20 of the State Health and Safety Code, and any waste that contains a radioactive material, the storage or disposal of which is subject to any other State or federal regulation;
11. sewage sludge comprised of human (not industrial) residue, excluding grit or screenings, removed from a waste water treatment facility or septic tank, whether in a dry or semidry form;
12. special wastes designated from time to time by the California Integrated Waste Management Board, including contaminated soil;
13. bulky items which cannot fit within standard roll-off containers or municipal refuse collection vehicles.

Upon receipt of Permits, the Parties shall promptly conform this definition of "Unpermitted Waste" to the provisions thereof to the extent necessary to comply with Applicable Law, and shall thereafter promptly conform this definition to reflect any changes in Permits, subject to the provisions hereof with respect to Change in Law and potential changes in scope of service.

Vehicle Turnaround Guaranty is defined in Section 5.02.

Visitors Education Center is described in Section 4.01a

Working Days means days on which City offices are open to do business with the public.

EXHIBIT 2.01**CONTRACTOR'S REPRESENTATIONS AND WARRANTIES****a. Status.**

Contractor is a corporation duly organized, validly existing and in good standing under the laws of the State and is qualified to do business in the State.

b. Authority and Authorization.

The Contractor has full legal right, power and authority to execute and deliver this Agreement and perform its obligations hereunder. This Agreement has been duly executed and delivered by the Contractor and constitutes a legal, valid and binding obligation of the Contractor enforceable against the Contractor in accordance with its terms.

c. No conflicts.

Neither the execution or delivery by the Contractor of this Agreement, the performance by the Contractor of its Performance Obligations, nor the fulfillment by the Contractor of the terms and conditions hereof: (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, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the Contractor is a party or by which the Contractor or any of its properties or assets are bound, or constitutes a default thereunder; or (3) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets of the Contractor.

d. No approvals required.

No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the Contractor, except such as have been duly obtained from its Board of Directors.

e. No litigation.

There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of the Contractor's knowledge, threatened, against the Contractor wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the Contractor of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Contractor in connection with the transactions contemplated hereby.

EXHIBIT 2.02**CITY'S REPRESENTATIONS AND WARRANTIES****a. Status.**

The City is a political subdivision of the State, duly organized and validly existing under the Constitution and laws of the State.

b. Authority and Authorization.

The City has full legal right, power and authority to execute, deliver, and perform its obligations hereunder. This Agreement has been duly executed and delivered by the City and constitutes a legal, valid and binding obligation of the City enforceable against the City in accordance with its terms.

c. No conflicts.

Neither the execution nor delivery by the City of this Agreement, the performance by the City of its obligations hereunder, nor the fulfillment by the City of the terms and conditions hereof: (1) conflicts with, violates or results in a breach of Applicable Law; or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

d. No approvals.

No approval, authorization, license, permit, order or consent of, or declaration, registration or filing with any governmental or administrative authority, commission, board, agency or instrumentality is required for the valid execution and delivery of this Agreement by the City, except such as have been duly obtained from the City Council.

e. No Litigation.

There is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality pending or, to the best of the City's knowledge, threatened, against the City wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by the City of its obligations hereunder or in connection with the transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

EXHIBIT 3.01**CONDITIONS PRECEDENT TO CITY'S OBLIGATIONS**

a. Intentionally omitted.

b. Insurance.

The Contractor shall submit to the City on demand certificates of insurance which Contractor is obligated to obtain and maintain pursuant to Article 11, the terms, conditions, amounts and cost of which shall be reasonably satisfactory to the City.

c. Change in Law.

Since the date hereof there shall not have been any Change in Law compliance with which, in the judgment of the City, would adversely affect it or its ability to perform its obligations hereunder or under any other agreement, contract or instrument entered into or to be entered into by it in connection herewith, including any Excess Capacity Arrangements.

d. Execution of Limited Financial Guaranty Agreement.

Contractor shall have executed the Limited Financial Guaranty Agreement attached hereto as Exhibit 9.02.

e. Surrender Current Claim.

Contractor shall carry out its obligations set forth in that certain settlement agreement and mutual release dated and approved by the City Council of the City on January 10, 2012, concurrent with its approval of this agreement, including filing of a request for dismissal of its complaints and/or cross complaints in those cases numbered CIV237512 and CIV237332 in the Ventura County California Superior Court, provided that the City also shall carry out its obligations under such settlement agreement and mutual release and by all dismissals of its claims in the aforementioned actions.

EXHIBIT 4.01**OPERATIONS AND MAINTENANCE MANUAL****a. Contractor Responsibility.**

Notwithstanding any such annual review and comment by the City, the operation and maintenance of the Facility shall remain the responsibility of Contractor. Neither the annual review nor comment upon, nor the failure of the City to comment upon, the Operations and Maintenance Manual shall (1) relieve Contractor of any of its obligations and responsibilities hereunder or impose any liability upon the City, nor (2) be deemed to be a representation by the City that Contractor's Facility Operation in accordance with the Operations and Maintenance Manuals signifies that the Contractor has complied with all its Performance Obligations with respect to Facility Operations or with Applicable Law.

b. Contents.

The Operations and Maintenance Manual shall detail the procedures for Facility Operation, including operation during peak capacity and emergencies. It shall be in addition to manuals supplied by Equipment Vendors. It shall specify how Contractor intends to fulfill its Performance Obligations, including receipt, sorting, Processing, Recovery and transfer of Permitted Waste and Recovered Materials in a safe, sanitary and worker like manner and in sufficient detail to allow a third party reasonably experienced in waste transfer, processing and material recovery operations to operate and maintain the Facility and perform Facility Operations, including:

A. Facility Operating Procedures.

- a. Procedures for Facility Operations for the Facility Throughput Guaranty, as such Guaranty may be increased or decreased from time to time in accordance with Exhibit 5.02 including:
 - i. Receipt of Mixed Municipal Waste, Source Separated Recyclable Materials, Recyclable Waste, Recyclable Rich Waste, Source Separated Yard Waste and Construction and Demolition Debris, including municipal hauler, commercial hauler and Selfhaul receiving area management on the Transfer Station tip floor and at the Buyback Dropoff Center and the Recyclable Household Hazardous Waste Collection Area;
 - ii. Transfer of Mixed Municipal Waste and Residue at the Transfer Station;

- iii. Recovery of wood and green waste, any Source Separated Yard Waste and Construction and Demolition Debris on the tip floor of the Transfer Station;
 - iv. Recovery and Processing of Source Separated Recyclable Materials, Recyclable Rich Waste and Recyclable Waste at the MRF.
- b. Means of complying with all Applicable Law, including waste inspection and Unpermitted Waste rejection and handling protocols; Recovery, Processing, storage, and transportation of Recovered Materials; transfer and transportation of Mixed Municipal Waste, Residue, and Unpermitted Waste; wastewater handling (which may refer to specific provisions of the RSI or Permit).
 - c. Comprehensive descriptions of and operating procedure for all Facility support systems including heating, cooling, electrical and plumbing systems.
 - d. A description of plans for accommodating visitors, including school and civic group field trips.
 - e. Operating procedures for all Equipment
 - f. A health and safety plan including safety training for all Facility personnel.
- B. Contingency Plans
- a. Contractor's contingency plan for transferring Permitted Waste in the event that the Facility does not meet its Daily Throughput Guaranty.
 - b. A fire control/handling plan, including a list of fire control equipment.
 - c. General emergency conditions and response plan.
- C. Repair and Maintenance
- a. List of spare parts and lubricant inventory recommended by the Equipment Vendors.
 - b. Procedures, schedules, and checklists for all routine, periodic, preventative maintenance and replacement of Equipment (including rolling stock, if applicable) necessary to maintain Equipment at or above the performance level of the successful Acceptance Test and Performance Guaranties, in accordance with applicable Equipment Vendor's specifications and schedules so as to maintain in force any Equipment Vendor's warranties. The maintenance schedule and procedures shall be implemented through a software program dedicated to the Facility with software and printouts available to the City at the Facility during Transfer Station Receiving Hours.

- c. Description for contingency plans during scheduled repair and maintenance and in the event of failure or other downtime, including backup, substitute or replacement equipment of the same type or ability as the Equipment, as necessary to continue uninterrupted Facility Operations, if possible, while Equipment regularly in service is inoperable or unavailable.
- d. Description and quantity of equipment to be replaced and floor and building reserve, together with the related cost and useful life, attached to Exhibit 5.03.

D. Organization Chart

An organization chart including job description and staffing requirements for all personnel who will be directly employed at the Facility.

E. Inspections

- a. Inspection, acceptance, and rejection procedures for all incoming waste (which may reference specific provisions of the RSI or Permits)
- b. Inspection procedures to check for Recyclable Materials which have not been Recovered.
- c. Inspection procedures of Recovered Materials to insure compliance with the Recovered Materials Quality Guaranty, marketing plan and buyers' requirements.

F. Recordkeeping

In accordance with Applicable Law, including AB 939 [et seq.] tracking, accountability, and compliance information, and in accordance with Section 4.12.

G. Equipment Vendors' Equipment Operation and Maintenance Manuals

Manuals and spec sheets, supplemented by Contractor as necessary to provide the following information: Equipment description, including shop drawings required for Equipping, maintenance and operation and assembly drawings for all field-replaceable assemblies; maintenance requirements (including lubrication schedules) for all Equipment and component parts thereof; start-up, shut-down, and typical operating procedures; monitoring, control and sampling; routine operator duties; troubleshooting procedures; safety procedures; contingency plans in the event of Equipment operating problems.

EXHIBIT 5.01

SCHEDULE OF SUBCONTRACTORS

(As amended from time to time)

- a. **Subcontractors:** (list by name, attach)
- b. **Unpermitted Waste Hauler:** (list by name, attach)
- c. **Subcontractors receiving more than \$200,000/year:** (list by name, attach)

EXHIBIT 5.02

INCREASED THROUGHPUT GUARANTY

INCREASED THROUGHPUT GUARANTY, as amended 1/26/99										
Base			Excess Tonnage Fee (13.03) (applicable to tons over Base tonnage (2))	Facility Throughput Guaranty (Section 4.07)		Rejection Rights (Section 5.01b(III))	MRF Throughput (Section 6.02)		Materials Recovery Guaranties Maximum Tonnages (Section 6.01a)	
Tons/Day	Base Facility Tonnage-Tons/Year (Section 13.02b)	Base Service Fee (13.02b) (1)		Daily Throughput Guaranty-Tons/Day	Annual Throughput Guaranty-Tons/Year	Tons/48 hours	Source Separated Recyclable Materials (Tons/Year)	Recyclable and Recyclable Rich Materials (Tons/Year)	Daily Maximum MRF Tonnage (Tons/Day)	Annual Maximum MRF Tonnage (Tons/Year)
0-653	152,826	\$3,522,630	\$12.19	845	197,775	1,620	7,827	55,600	768	179,795
0-767	179,795	\$3,881,049	\$12.10	929	217,552	1,773	9,208	65,412	845	197,775
0-845	197,775	\$4,132,857	\$11.99	1,022	239,148	1,951	10,129	71,954	929	217,552
0-929	217,552	\$4,409,572	\$11.65	1,124	263,016	2,146	11,142	79,148	1,022	239,148

* In the event of a conflict between the Base Facility Tonnage and the tons/day on the previous column, this column will control

BASE MRF FEE

Base Tons/Day	Base Annual Tons (Section 13.02a)	Base MRF Fee (Section 13.02a)	Excess MRF Fee (for tons over base) (Section 13.03a)
0-271	63,427	\$3,522,630	\$19.14
0-319	74,620	\$3,845,017	\$21.57

- (1) Updated annual number \$5,270,342 for up to 152,826 annual tons, per Section 13.02(b)
- (2) Updated annual number \$18.24 per ton in excess tons of 152,826 annual tons, per Section 13.03b.

EXHIBIT 5.03**FORM OF INVOICE FOR SCHEDULED REPLACEMENTS****a. Contractor warrants:**

- (1) that the Contractor has paid or incurred costs for major repairs to the Building or major repairs and replacements of Equipment listed on the schedule of Equipment and Replacements attached to this Exhibit;
- (2) the Direct Cost of all such items;
- (3) that the requisition does not cover items which were the subject of previous requisitions; and
- (4) if the requisition with respect to any item is being submitted earlier than anticipated by the City based on the suggested schedule in the Equipment Vendors' manual or otherwise, that all ordinary maintenance and repair required for the Facility under accepted practice for comparable facilities or equipment, sound management and operations practice has been performed in a timely manner, and that the requested accelerated major repair is required due to an unforeseen or emergency equipment failure.
- (5) Title to all such items covered by this invoice will pass to the City no later than the time of payment thereof.
- (6) Upon submittal of an invoice, all items for which payments have been made by the City shall be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, material suppliers or other Persons making a claim by reason of having provided materials and equipment.

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FACILITY EQUIPMENT				
Serial No.	Make/Model	Acquisition Date	Estimated Life Cycle	Estimated Replacement Cost
3JW02874	CAT 950G Front-end Articulating Loader	11/2/2002	6	\$225,000
3JW02867	CAT 950G Front-end Articulating Loader	11/2/2002	5	\$225,000
3JW01124	CAT 950G Front-end Articulating Loader	11/1/1999	5	\$225,000
N/A	Setco Junkyard Dog Tires	1/8/2003	3	\$30,000
N/A	Setco Junkyard Dog Tires	1/6/2003	3	\$30,000
N/A	Setco Junkyard Dog Tires	7/24/1999	3	\$30,000
9VWM02566	CAT 914G Front-end Articulating Loader	8/13/2002	5	\$55,000
N/A	Setco Junkyard Dog Tires	8/13/2002	3	\$15,000
H177B39976A	Hyster H60XM LIR Truck with Rotator	8/12/2003	6	\$25,000
H177B40125A	Hyster H60XM LIR Truck with Rotator	8/12/2003	5	\$25,000
H177B40018A	Hyster H60XM LIR Truck without Rotator	8/12/2003	5	\$25,000
H177B40021A	Hyster H60XM LIR Truck without Rotator	8/12/2003	5	\$25,000
H177B40022A	Hyster H60XM LIR Truck without Rotator	8/12/2003	5	\$25,000
T00280A934885	John Deer 280 Series II Skid Steer	2005	3	\$20,000
T00280B834841	John Deer 280 Series II Skid Steer	2005	3	\$20,000
1M2K166C3HM001203	Mack Rolloff Truck	1997	10	\$25,000
1XPZL69X4JD703394	Peterbilt Rolloff Truck	1998	10	\$25,000
9BFPH70P6HDM03494	Ford Elgin - Street Sweeper	8/15/1988	7	\$35,000
D0927	Simon MP80 412 (1991) Basket Lift	1997	7	\$35,000
	Mayfran International (MRF Lines)	1997	20	\$1,000,000
	Enterprise #12-E2RRB-200 Baler	1997	10	\$400,000
	Enterprise - Overhead Storage Hoppers	1997	20	\$140,000
	5,000 lbs. Platform Scale	1998	10	\$7,500
	Video Surveillance System	2005	10	\$100,000

OFFICE FURNISHINGS		
	Estimated Life Cycle	Estimated Replacement Cost
Computer System	5	\$25,000
Office Furniture	5	\$25,000
Other - fax, copier, phones, etc.	5	\$25,000

EXHIBIT 5.04**RECORD KEEPING REQUIREMENTS****a. Weight.**

- (1) Delivery of Permitted Waste weighed at Scalehouse: The weight of Permitted Waste in the aggregate and by category (Mixed Municipal Waste, Source Separated Recyclable Materials, Recyclable Waste, Recyclable Rich Waste, Source Separated Yard Waste and Construction and Demolition Debris, to the extent Delivered in segregated loads) Delivered by each Permitted User and Selfhauler daily to the Facility and weighed at the Entry Scalehouse;
- (2) Delivery of Permitted Waste and Recyclable Household Hazardous Waste not weighed at the Scalehouse:

The volume, category and estimated weight of

- i. Permitted Waste (including Source Separated Recyclable Materials) Delivered daily to the Buyback/Dropoff Center,
 - ii. Recyclable Household Hazardous Waste Delivered daily to the Recyclable Household Hazardous Waste Area, and
 - iii. Mixed Municipal Waste Delivered daily by Selfhaulers to the Transfer Station in Selfhaulers' vehicles which are not weighed at the Entry Scalehouse (including license plate and reported jurisdictional origin, and date and time of Delivery);
- (3) Delivery of Source Separated Recyclable Materials: The weight of Source Separated Recyclable Materials purchased at the Buyback/Dropoff Center;
 - (4) Transport of Recovered Materials; transfer of Residue and Permitted Waste: The weight of Recovered Materials (including specifically the weight of all Recovered Materials Processed, sold or otherwise diverted from disposal, and/or otherwise disposed); Residue; transferred Permitted Waste; and any other materials leaving the Facility, including estimate of contaminants or Residue attributable to the City;
 - (5) Invoices: Copies of the invoices or other receipts issued by third parties (e.g. brokers, purchasers or other takers of Recovered Materials) evidencing weight of Recovered Materials shipped from the Facility;
 - (6) Tare Weights: Gross and tare weight of each municipal and commercial vehicle (including vehicle ID number and date and time of Delivery).

b. Cash.

- (1) Tip Fees paid Contractor in cash for Delivery of Permitted Waste by Selfhaulers;
- (2) Cash register receipts for Contractor's purchase of Source Separated Recyclable Materials at the Buyback/Dropoff Center; and
- (3) Any other cash receipts.

c. Operations.

- (1) Video tape recordings of Facility Operations, including views of weighing and each tipping operation, with date and times.
- (2) Utility consumption (power, gas, water etc.), based on utilities' billings
- (3) Traffic counts, and upon City request, time trucks queue, cross scales at the Entry Scalehouse and tip
- (4) Equipment maintenance logs in accordance with Operations and Maintenance Manual
- (5) Staffing and number of worker-hours, including number of shifts
- (6) Downtime, including repair and maintenance;
- (7) Routine, periodic and preventive Facility maintenance, including detailed logs for each piece of Equipment.

d. Marketing.

- (1) Type, grade, specifications and quantity of Recovered Materials;
- (2) Unit and total sales prices;
- (3) Names, addresses, phone numbers of brokers and purchasers, including contacts;
- (4) Date and terms of sale;
- (5) Transportation costs (including distance, if Contractor transports Recovered Materials);
- (6) Sales invoices (including substantiation of Tons of material rejected by purchasers thereof for failure to meet specifications, or down-graded following receipt thereof), contracts or other documents evidencing transfer of title;
- (7) Any certifications of end use of Recovered Materials.

EXHIBIT 5.05

REPORTING REQUIREMENTS

The monthly report shall include the following information:

(1) Facility Tonnage:

Summary of daily/monthly weight records with respect to the Facility, kept in accordance with Exhibit 5.03.

(2) Permitted Users' Tonnage:

Summary of daily/monthly weight records with respect to each Permitted User (including the Selfhaulers) by jurisdiction (including the City), kept in accordance with Exhibit 5.03 (including the average estimated percentage of Residue present in their respective loads of Source Separated Recyclable Materials, Recyclable Rich Waste and Recyclable Waste).

(3) Recovery Information and Performance Guaranties:

- i. Tonnage of Recyclable Waste, Recyclable Rich Waste, Source Separated Yard Waste, Source Separated Recyclable Materials and Construction and Demolition Debris which was Recovered and Processed at the MRF;
- ii. Tonnage of any Mixed Municipal Waste, wood and green waste, Source Separated Yard Waste and Construction and Demolition Debris which was floor sorted in the Transfer Station;
- iii. Calculation of Performance Guaranties on monthly and Contract Year-to-date basis. If any Performance Guaranty is not met on a pro-rated, monthly basis, Contractor shall include a discussion of reasons why such Guaranty was not met, its proposed corrective action to meet such Guaranty in the succeeding month, and projections for annual compliance thereof.
- iv. Projections of Recovery and Processing during the months remaining in the then current Contract Year.

(4) Disposal:

Daily and monthly summary of Tons transferred to the Designated Disposal Facility.

(5) Marketing and Diversion:

- i. Summary of Marketing records kept in accordance with Section 4 of Exhibit 5.03;
- ii. An inventory of Recovered Materials in storage on or off-Site as of the end of each month;

- iii. Use of local, state, regional and national waste exchanges, including CalMax, by waste type;
- iv. Projections of Marketing and diversion during the months remaining in the then current Contract Year.
- v. Based on Delivery records, Contractor will use Reasonable Business Efforts to allocate specific diversion percentages to individual Permitted Users' jurisdictions. City acknowledges that commercial haulers for some Permitted Users may collect waste from multiple jurisdictions, and will cooperate with Contractor to develop a method or procedure for tracking and/or apportioning such waste by jurisdiction of origin.

(6) Productivity Report:

- i. Monthly summary, based on operations records kept in accordance with Section 3 of Exhibit 5.03:
- ii. Monthly average sorting/recovery productivities measured in pounds recovered per person-hour;
- iii. Upon City request, the time it takes vehicles from leaving the Entry Scales to tip waste.

(7) Facility O&M Report:

Monthly report on Contractor's operation and maintenance activities, with reference to applicable provisions, schedules and/or requirements in the Operations and Maintenance Manual, including summary of operations records kept in accordance with Section 3 of Exhibit 5.03.

(8) Safety Report:

Monthly report of any accidents with respect to Permitted Users' or Selfhaulers' vehicles on Site and any accidents to Persons, including Contractor's employees, on Site.

The City may request additional information and Contractor shall use Reasonable Business Efforts to supply such requested information promptly.

EXHIBIT 5.06**UTILITY CONSUMPTION GUARANTIES****Water**

- Landscape Irrigation
 - On-Site Landscaping 2,200,000 gal./year
 - On-Site Landscaping (Del Norte median) 400,000 gal./year
- Misting System (20,000 s.f.) 3,000,000 gal./year
- Domestic Water 700,000 gal./year
- Truck Washing 350,000 gal./year
- **Total** **6,650,000 gal./year**
(899,037 h.c.f./year)

Sewer

- Domestic Sewer 94,000 h.c.f./year
- Industrial Sewer 47,000 h.c.f./year
- **Total** **141,000 h.c.f./year**

Natural Gas

- **Total** **10,000 therms/year**

Electric

- Site Lighting 2,400 megawatt hours/year
- Interior Lighting and Office Power
 - Office/Education 200 megawatt hours/year
 - High-Bay Spaces 1,000 megawatt hours/year
- Ventilation and Air Conditioning
 - Office 250 megawatt hours/year
 - High-Bay Spaces 100 megawatt hours/year
- MRF Equipment
 - Baler 700 megawatt hours/year
 - Conveyors, etc 900 megawatt hours/year
- **Total** **5,500 megawatt hours/year**

EXHIBIT 6.01

UNPERMITTED WASTE INSPECTION PROCEDURE

(INCLUDING HAZARDOUS WASTE EXCLUSION PROGRAM)

REGIONAL RECYCLING AND TRANSFER STATION **LOAD CHECKING PROGRAM**

I. Random Selection of Vehicles

- A. Select a minimum of two (2) vehicles per day.
- B. Select them at different times during the day (Randomize selections each day for example Monday at 1:00 pm and Tuesday at 9:00 am).
- C. Select an equal share of roll-off and packer trucks.
- D. Record date and time of selection of load checking form.

II. Dumping Procedure

- A. Dump selected trucks apart from the other haulers in clean area of the station.
- B. Dumping area must be separated from the other site operations by traffic cones.

III. Sorting Procedure

- A. Each load will be visually inspected by a trained spotter.
- B. Loads will be spread out and particular items such as drums, 5 gallon containers, wastes with DOT or other descriptive labels, sludges and liquids, soils and rags, unidentifiable wastes suspected of being hazardous will be inspected and evaluated to determine whether the item is hazardous.
- C. All containers large enough to contain other objects must be opened.

IV. Handling Suspected Hazardous Waste

- A. If hazardous waste is found:
 - 1. If the transporter is still on the premises:
 - a. Obtain driver's license number, vehicle license number, vehicle identification number, and bin number if roll-off.

b. Contain material and notify Ventura County Environmental Health Division, Hazardous Materials Section at 805-654-2813.

2. If transporter is identified, but has already left the facility:

a. Transporter's company should be contacted and notified of findings.

b. Transport trucks from that company may be subject to regular inspections.

3. If transporter is not identified:

a. The Oxnard Recycling and Transfer Station is liable for disposal (becomes the generator).

B. Procedure for Handling Hazardous Waste

1. Any type of hazardous waste situation should be handled by the RRTS Hazardous Response Team, consisting of employees trained in the handling of hazardous waste. Personal Protective Equipment must be worn for hazardous waste clean ups. Any waste too hazardous to touch, should be isolated and handled as an emergency.

2. If emergency, such as spills, fires, or explosions:

a. Call 911, Oxnard Fire Department, Hazardous Waste Division.

b. Call Office of Emergency Services at 1-800-852-7550.

3. For non-emergencies:

a. If waste can be easily moved to storage area, temporarily set aside identifiable materials according to the following categories:

- Flammable and combustible
- Oxidizers
- Poisons
- Poisons containing heavy metals
- Corrosives (acids)
- Corrosives (bases)

b. If waste is not easily moved:

1) Barricade and isolate area with rope or cones, so it will not interfere with transfer operations. Supervisor will determine severity of spill. For non-emergencies the RRTS Hazardous Response Team will wear appropriate Personal Protective Equipment and will clean-up and move the hazardous waste. If the supervisor classifies the spill as an emergency, 911 will be called (Oxnard Fire Department Hazardous Waste Division) and the State Office of Emergency Services 1-800-857-7550.

c. Leaking containers must be placed in an overpack drum and taken to the storage area immediately.

3. If material is unidentifiable, it will be set aside and the following EPA-approved hazardous waste transporter will be contacted for identification and handling:

MSE Environmental
1250-H Avenida Acaso
Camarillo, CA 93012
805-987-0217 (Emergency #)

4. Any hazardous material remaining on site over night, must be stored in the hazardous waste storage area.

C. Notification: Every hazardous waste incidence should be documented. The Environmental Health Specialist of Ventura County Environmental Health Division, Hazardous Materials Section will review records annually.

D. Regulating agencies to contact with questions:

1. Oxnard Fire Department at 805-385-7722
2. Ventura County Environmental Health Division, Hazardous Materials Section at 805-654-2813

E. EPA-Approved Hazardous Waste Transporter:

MSE Environmental
1250-H Avenida Acaso
Camarillo, CA 93012
805-987-0217 (Emergency #)

V. Packaging Procedures

A. Small Containers of the same hazardous class can be packed in the same drum (lab packs).

B. All lab packs must contain enough absorbent material to contain liquids if there is a spill and prevent breakage. Vermiculite is approved packing material.

C. Steps

1. Pack a few inches of absorbent material at bottom of drum.
2. Pack more absorbent around each small container placed in the drum.
3. Drums for corrosive acid storage to be protected with plastic liner prior to adding absorbent and waste. Each drum is to be assigned a number which is clearly marked on the drum body and lid.
5. Log sheet, should be taped to the lid and should be marked with facility location, drum number, and hazard category.
6. Hazardous waste label should be filled out and affixed to drum.
7. Affix proper hazard category label.

D. Packing compatibility:

1. Only chemically compatible materials can be packaged together. DON'T MIX: ACID AND BASES, CYANIDE COMPOUNDS AND ACIDS, OXIDIZERS AND FLAMMABLE (bleach is an oxidizer, though often marked poison).
2. If there is any doubt as to hazard class, call Dept. of Health Services.

VI. Labeling and Record Keeping

A. Log Sheet: Enter the following information on a log sheet - to be used later to prepare manifest:

1. Waste category,
2. List as much information about ten chemical as possible (including the brand name),
3. Number of containers, and,
4. Volume or weight of each container.

- B. Manifest: Must be prepared if wastes are to be transported (manifest forms available from the Dept. of Health Services).
- C. Training Records: Including Health and Safety Certifications.
- D. Inspection Reports.
- E. Spill or emergency incident reports.

VII. Storage Procedures

- A. Lab packed drums are to be stored in rear storage area (must be stored on pavement).
- B. Drums containing flammable, poisons, corrosives (bases) must, be separated from drums with corrosives and oxidizers.
- C. Containers must be closed except when being packed.
- D. Hazardous waste area to be fenced and secured.
- E. Signs in English and Spanish posted around storage area(s) reading:

**DANGER: HAZARDOUS WASTE STORAGE AREA.
ALL UNAUTHORIZED PERSONS KEEP OUT.
KEEP LOCKED WHEN NOT IN USE.**

VIII. Disposal Procedures

- A. Each lab pack must be inspected by a site supervisor experienced in waste identification and categorization before it is sealed.
- B. Each sealed drum must be labeled as to hazard class (according to CFR 40 and 49).
- C. Hazardous waste cannot accumulate for more than 90 days, otherwise the Contractor must secure a permit.
- D. Obtain an EPA ID# from the Dept. of Health Services.
- E. Manifest must be prepared if wastes are to be transported.
 - 1. Manifest forms are available from the Dept. of Health Services.
 - 2. Prepare five copies:

- Regional Recycling and Transfer Station keeps two.
 - One copy to transporter.
 - Legible copy to Environmental Health Division within 30 days of each shipment.
3. Within 35 days of shipment, Regional Recycling and Transfer must receive copies of manifest signed by the operator of the disposal facility. If not, Regional Recycling and Transfer Station must contact the facility (if not received within 45 days, an exception report of the pertinent manifest and cover letter describing efforts made to locate shipment, must be submitted to the Environmental Health Division).
4. Regional Recycling and Transfer Station will keep copies of manifests for three years at a minimum.
5. Transporter Only EPA-permitted facilities can transport hazardous wastes.

REGIONAL RECYCLING AND TRANSFER STATION
HAZARDOUS WASTE LOAD CHECKING
TRAINING PROGRAMS

I. Training Personnel

- A. Pickers: Only those trained in the use of personal protective equipment, emergency response, identification of hazardous materials and proper handling and procedures are allowed to sort refuse.
- B. Training is required' at the time of the employee's INITIAL ASSIGNMENT AND WHENEVER A NEW HAZARD IS INTRODUCED into the work place.
- C. Supervisor will train regarding specific aspects of the load checking program.
- D. Training is to be reinforced once a year.

II. Personal Protective Equipment

- A. Respiratory Protection: training required before worker is allowed to wear respirators, site manager is responsible for insuring all site workers are respirator certified, and certificates must be kept up to date/renewed annually, and copies must be kept available for inspection.
- B. Eye Protection: safety glasses or goggles must be worn when handling hazardous wastes, and packers must wear full face shield.

C. Body Protection: disposable coveralls or Tyvec sleeve, Nitril gloves, neoprene aprons, and steel toes boots.

D. Dust Masks: must be provided and additional protection must be available upon request.

EXHIBIT 7.01**MEASUREMENT OF MATERIALS RECOVERY**

The level of Recovery shall be measured as follows:

100 (RM/PW) = Percentage Recovery,

Where RM = Permitted Waste Recovered during such calendar month and Contract Year-to-date, expressed as $RM = PW - (R + DRM)$

For purposes of the calculation:

PW = Tons of Permitted Waste Delivered during each calendar month and Contract Year-to-date (or with respect to the first year following the Acceptance Date, the portion thereof).

R= Tons of Residue and/or any other materials transferred to a Designated Disposal Facility for disposal during each such calendar month and Contract Year-to-date.

DRM = Recovered Materials which are Recovered during such calendar month and Contract Year-to-date, but subsequently disposed of due to lack of markets or used as alternative daily cover.

For example:

PW = 180,000 Tons

R = 147,600 Tons

DRM = 1,500 Tons

$[[180,000 - (147,600 + 1,500)]] 100 = 17\% \text{ Recovered}$

180,000

EXHIBIT 7.02**RECOVERED MATERIALS QUALITY GUARANTY**

Contractor will Recover and Process Recovered Materials that meet the minimum quality expectation of the secondary material markets to ensure Contractor can market and divert Recovered Materials from disposal and obtain the best value therefore.

The specifications contained in the publications referenced below provide a summary of industry standard specifications for commodities delivered to secondary material consumers as of the date hereof. The Contractor will be responsible to monitor the recovered materials market and identify changed minimum quality specifications. Contractor may submit alternative specifications to the City in writing, for review and approval; if needed to meet changing market conditions.

For establishing industry standards for metals, paper, and plastic materials the following publications will be referenced as the standard:

Institute for Scrap Recycling Industries, Inc. (ISRI), Scrap Specifications Circular 1994, Guidelines for Ferrous Scrap, Nonferrous Scrap, Paper Stock, and Plastic Scrap.

Product quality for recovered glass will be referenced to:

Anchor Glass Container, Technical Services Standard #700 010 01 for Purchased Unprocessed Cullet.

Recovered materials quality specifications will be updated to reflect changes in applicable industry standards.

In the event the publications described above are discontinued Contractor will, at a minimum, use a publication of equal standards as a reference to this Exhibit.

Categories of Recovered Materials

1. OLD NEWSPAPER (ONP)
2. OLD CORRUGATED CARDBOARD (OCC)
3. SORTED COLORED LEDGER, SORTED WHITE LEDGER; COMPUTER PRINTOUT
4. MIXED PAPER
5. GLASS

6. ALUMINUM CANS (USED BEVERAGE CONTAINERS - UBC)

7. TIN CANS

8. PET PLASTIC BOTTLES

9. HDPE PLASTIC BOTTLES

10. MIXED PLASTIC BOTTLES

11. MULCH/COMPOST FEEDSTOCK

EXHIBIT 8.01

RECOVERED MATERIALS MARKETING PLAN

The Marketing Plan shall at a minimum, contain the following information:

(1) Types, Quantities and Specifications:

Types and estimated quantities of Recovered Materials, together with market specifications therefore.

(2) Prices, Purchasers, Contracts:

Estimated unit prices and total sales revenue for each Recovered Material, transportation costs, together with possible purchasers and purchase terms, including mid- or long-term contracts or spot market agreements.

(3) Marketing:

Advertising and sales promotion strategy and budget; contingency actions in event any Recovered Material cannot be sold.

EXHIBIT 9.01**INSURANCE**

Contractor shall secure and maintain the following insurance:

a. General Liability Insurance

1973 Comprehensive General Liability (Occurrence Form), or 1986 or 1988 commercial General Liability (Occurrence Form), including the following extensions:

- 1) Premises and operations
- 2) Products and completed operations
- 3) Advertising and personal injury, including copyrights infringement
- 4) Unlicensed mobile equipment
- 5) Explosion, collapse and underground hazard coverage
- 6) Blanket contractual
- 7) Broad form property damage
- 8) Contingent coverage for any subcontractors
- 9) Care, custody and control coverage for City-owned equipment¹
- 10) Premises medical coverage
- 11) Cross suits.

Minimum limits of liability for 1973 Comprehensive General Liability (Occurrence Form) shall be \$1,000,000 each occurrence or in the aggregate, as applicable, for Combined Single Limit-Bodily Injury and Property Damage Liability and \$1,000,000 aggregate for Products/Completed Operations and Property Damage on the Site; and for 1986 or 1988 Commercial General Liability (Occurrence Form) shall be:

1 May be covered under Property Policy

Per occurrence limit:	\$2,000,000
Products/Completed Operations aggregate	\$2,000,000
Policy aggregate	\$2,000,000
Personal and Advertising Injury limit	\$1,000,000
Fire damage limit	\$1,000,000
Medical Payments	\$ 10,000.

b. Comprehensive Automobile Liability Insurance

Comprehensive coverage for:

- 1) All vehicles and equipment requiring licenses under Applicable Law, owned by the City or Contractor, and their drivers employed by the Contractor
- 2) All vehicles hired by City or Contractor, and their drivers employed by the Contractor
- 3) Uninsured/Underinsured Motorists liability coverage
- 4) Cross suits
- 5) Transportation by insured vehicle of "pollutants" or "wastes" and clean-up costs relating to spills thereof

Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the responsibility of Contractor.

c. Workers' Compensation Insurance

In accordance with Applicable Law. Such policy shall include a waiver of rights of subrogation against the City and the Facility.

d. Employers' Liability Insurance

In the following amounts:

- 1) Bodily injury by accident \$1,000,000 each accident
- 2) Bodily injury by disease \$1,000,000 policy limit, \$1,000,000 each employee.

Such policy shall include a waiver of rights of subrogation against the City and the Facility.

e. Crime Insurance, Including Employee Dishonesty/Fidelity Bond

Including losses of "money, securities and property other than money and securities", including gate fees, Recovered Materials, and Recovered Materials revenues lost as a result of burglary, theft, forgery, alteration, disappearance and destruction occurring on or off Site. Deductibles shall be no greater than \$1,000 per loss (\$2,500 maximum), which deductibles shall be the responsibility of Contractor. This requirement can be satisfied by the Fidelity Bond required by Section 11.04.

f. Umbrella Liability and/or Excess Liability

Policies with endorsements providing "drop down" coverage solely for Contractor's Performance Obligations hereunder effective when primary limits of General Liability, Automobile and Employers' Liability policies described in items I, II and IV above are exhausted, with minimum limits of liability (Occurrence Form) of \$10,000,000 each occurrence or in the aggregate, as applicable, for Combined Single Limit-Bodily Injury and Property Damage Liability and \$10,000,000 aggregate for Products/Completed Operations and Property Damage on the Site. Non-concurrent exclusions shall not be permitted. Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the responsibility of Contractor.

g. Property

Insurance, naming City and Facility as owners, insured and loss payees as their interests may appear, covering "All Risks" of loss or damage to physical property, including the periods of earthquake and flood, including extensions for:

- 1) Business Interruption
- 2) Expediting Expense
- 3) Boiler and Machinery (Systems Performance and Efficacy)
- 4) Contractors' and Inland Marine Equipment
- 5) On-Site or Off-Site Materials in storage or in the open
- 6) Materials in Transit
- 7) Valuable Papers

- 8) Electronic Data Processing Equipment
- 9) Media and Hardware
- 10) Increased Cost of Construction
- 11) Ordinance or Law,

Minimum limits of liability shall be in an amount acceptable to the City, but in no event less than replacement cost of the project and written on a replacement cost basis, which amount may be adjusted on the Acceptance Date and as of the first day of each Contract Year thereafter to equal the value of the Facility and income it generates to City. Such policy shall contain a valid agreed amount endorsement waiving any co-insurance penalty. Deductibles shall be no greater than \$10,000 per loss, which deductibles shall be the responsibility of Contractor.

h. Environmental Impairment and Pollution Liability

Coverage for any environmental liability attributable to Contractor's actions, including clean-up and/or transportation of pollutants, hazardous materials or Unpermitted Waste off-Site. Minimum limits of liability shall be \$10,000,000 per occurrence and in the aggregate. This coverage is not required prior to the Acceptance Date. However, it shall be reviewed and evaluated on the Acceptance Date. If commercially available and reasonably priced, the requirement may be reinstated at the City's option. If the requirement is reinstated, the Contractor shall be entitled to reimbursement of its Direct Costs therefor. The amount of the deductibles and the Party responsible for payment of the deductible shall be determined if and when the policy is obtained.

Notwithstanding anything in Exhibit 9.01, or anywhere else in the Agreement, Contractor waives subrogation of workers' compensation benefits for incidents caused by its sole negligence, but not for incidents caused by City's negligence.

EXHIBIT 9.02**LIMITED FINANCIAL GUARANTY AGREEMENT**

This Guaranty, made as of the date of the Agreement (as defined below) by Republic Services, Inc., a corporation duly organized and existing in good standing under the laws of the State of California and having its principal place of business in Los Angeles, California ("**Guarantor**"), to and for the benefit of the City of Oxnard ("**City**"), a municipal corporation of the State of California (the "**State**").

WITNESSETH

WHEREAS, BLT Enterprises of Oxnard, Inc. (the "**Contractor**"), a subsidiary of the Guarantor, and the City have negotiated an Agreement for the Management and Operation of a Materials Recovery Facility and Transfer Station, Transfer of Waste for Disposal, and Marketing of Recovered Materials, dated as of the later of the date of execution thereof by the City or the Contractor, as may be supplemented and amended from time to time in accordance with the terms thereof (the "**Agreement**"), which Agreement is incorporated herein by reference and hereby made part hereof;

WHEREAS, it is in the interest of Guarantor that the Contractor enter into the Agreement with the City;

WHEREAS, the City is willing to enter into the Agreement only upon the condition that the Guarantor execute this Guaranty;

WHEREAS, in the event Contractor owes the City any sums of money pursuant to the Agreement, Guarantor is willing to Guaranty, as set forth below, the payment of up to and including \$250,000 thereof; and

WHEREAS, it is a condition precedent to the City's obligations under the Agreement that the Guarantor provide this Guaranty.

NOW, THEREFORE, as an inducement to the City to enter into the Agreement, the

Capitalized terms used herein and not otherwise defined herein, shall have the meaning assigned to them in the Agreement

a. Limited Financial Guaranty of Contractor's Financial Obligations to City. Guarantor hereby directly, unconditionally, irrevocably, and absolutely guaranties the payment of money in the aggregate during the term hereof up to and including TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) to the extent that Contractor, or any successor or assign

of the Contractor, owes City any money pursuant to the terms of the Agreement, in accordance with the terms and conditions contained therein. Within thirty days' written request therefore by the City, Guarantor shall honor such payment Guaranty. Notwithstanding the unconditional nature of the Guarantor' payment obligations set forth herein, the Guarantor shall have the right to assert the defenses provided in the paragraph entitled "Defenses" under Section h hereof, against claims made hereunder.

b. Governing law; consent to jurisdiction; service of process.

This Guaranty shall be governed by the laws of the State. The Guarantor hereby agrees to the service of process in the State for any claim or controversy arising out of this Guaranty or relating to any breach. The Guarantor hereby agrees that the courts of the State, and to the extent permitted by law, the United States District Court for the Central District of California, shall have the exclusive jurisdiction of all suits, actions, and other proceedings involving itself and to which the City may be party for the adjudication of any claim or controversy arising out of this Guaranty or relating to any breach hereof, waives any objections that it might otherwise have to the venue of any such Court for the trial of any such suit, action, or proceeding, and consents to the service of process in any such suit, action, or proceeding by prepaid registered mail, return receipt requested.

c. Enforceability; no assignment.

This Guaranty shall be binding upon and enforceable against Guarantor, its successors, assigns, and legal representatives. It is for the benefit of the City, its successors and assigns. The Guarantor may not assign or delegate the performance of this Guaranty without the prior written consent of the City. Any such assignment made without the consent of City shall be void. Guarantor shall submit its request for City consent to the City together with the following documentation and any other documentation the City may request:

Audited financial statement for the immediately preceding three (3) operating years; indicating that in the opinion of the City the proposed assignee's financial status is equal to or greater than Guarantor's.

Satisfactory proof that in the last five years, the proposed assignee has not suffered any citations or other censure from any federal, state or local agency having jurisdiction over its waste management operations due to any significant failure to comply with state, federal or local waste management law and that the assignee has provided City with a complete list of such citations and censures;

Satisfactory proof that the proposed assignee has at all times conducted any solid waste management operations in an environmentally safe and conscientious fashion;

Satisfactory proof that the proposed assignee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of waste, including hazardous waste as identified in Title 22 of the California Code of Regulations;

Of any other information required by City to ensure the proposed assignee can fulfill the terms hereof, including the payment of damages, in a timely, safe and effective manner.

Guarantor shall undertake to pay City its reasonable expenses for attorneys' 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.

"Assign". For the purpose of this Section, "assign" includes:

(x) to sell, exchange or otherwise transfer to a third party any of Guarantor's assets dedicated to performance under this Guaranty.

(y) issuing new stock or selling, exchanging or otherwise transferring thirty percent or more of the then outstanding common stock of Guarantor to a Person other than the shareholders owning said stock as of the date hereof.

d. Guaranty absolute and unconditional.

The undertakings of Guarantor set forth herein are absolute and unconditional, and the City shall be entitled to enforce any or all of said undertakings against Guarantor without being first required to enforce any remedies or to seek to compel the Contractor to perform its obligations under the agreement or to seek, or obtain recourse against any other party or parties, including but not limited to the Contractor or any assignee of the Contractor, who are, or may be, liable therefor in whole or in part, irrespective of any cause or state of facts whatever. Without limiting the generality of the foregoing, the Guarantor expressly agrees that its obligations hereunder shall not be affected, limited, modified or impaired by any state of facts or the happening from time to time of an event, other than the payment of monetary obligations by the Contractor to City under the Agreement in accordance with the terms of the Agreement, including, without limitation, any of the following, each of which is hereby expressly waived as a defense to its liability hereunder, except to the extent such defenses would be available to the Contractor and release, discharge or otherwise offset Contractor's obligations under the Agreement:

- 1) The invalidity, irregularity, illegality or unenforceability, of or any defect in or objections to the Agreement;

- 2) Any modification or amendment or compromise of or waiver of compliance with or consent to variation from any of the provisions of the Agreement by the Contractor;
- 3) Any release of any collateral or lien thereof, including, without limitation, any performance bond;
- 4) Any defense based upon the election of any remedies against the Guarantor of the Contractor, or both, including without limitation, any consequential loss by the Guarantor of its right to recover any deficiency, by way of subrogation or otherwise, from the Contractor or any other person or entity;
- 5) The recovery of any judgment against the Contractor to enforce any such collateral or performance bond;
- 6) The City or its assigns taking or omitting to take any of the actions which it or any such assign is required to take under the Agreement; any failure, omission or delay on the part of the City or its assignees to enforce, assert or exercise any right, power or remedy conferred on it or its assigns by the Agreement, except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense by the Contractor with respect to a specific obligation;
- 7) The default or failure of the Guarantor to fully perform any of its obligations set forth in this Guaranty;
- 8) The bankruptcy, insolvency, or similar proceeding involving or pertaining to the Contractor or the City, or any order or decree of a court, trustee or receiver in any such proceeding;
- 9) In addition to those circumstances described in item (h), any other circumstance which might otherwise constitute a legal or equitable discharge of a guarantor or limit the recourse of the City to the Guarantor;
- 10) The existence or absence of any action to enforce the Agreement;
- 11) Subject to the provisions of the Agreement relating to Uncontrollable Circumstances, any present or future law or order of any government or of any agency thereof, purporting to reduce, amend or otherwise affect the Agreement or to vary any terms of payment or performance under the Agreement; provided that, notwithstanding the foregoing, Guarantor shall not be required to pay any monetary obligation of Contractor to City from which Contractor would be discharged, released or otherwise excused under the provisions of the Agreement.

e. Waivers.

Guarantor hereby waives:

- 1) Notice of acceptance of this Guaranty and of the creation, renewal, extension and accrual of the limited financial obligations Guaranteed hereunder;
- 2) Notice that any person has relied on this Guaranty;
- 3) Diligence, demand of payment and notice of default or nonpayment under this Guaranty or the Agreement, and any and all other notices required under the Agreement;
- 4) Filing of claims with a court in the event of reorganization, insolvency, or bankruptcy of the Contractor;
- 5) Any right to require a proceeding first against the Contractor or with respect to any collateral or lien, including, without limitation, any performance bond, or any other requirement that the City exercise any remedy or take any other action against the Contractor or any other person, or in respect of any collateral or lien, before proceeding hereunder;
- 6) (i) any demand for performance or observance of, or (ii) any enforcement of any provision of, or (iii) any pursuit or exhaustion of remedies with respect to, any security (including, with limitation, any performance bond) for the obligations of the Contractor under the Agreement; any pursuit of exhaustion of remedies against the Contractor or any other obligor or guarantor of the obligations; and any requirement of promptness or diligence on the part of any person in connection therewith;
- 7) To the extent that it lawfully may do so, any and all demands or notices of every kind and description with respect to the foregoing or which may be required to be given by any statute or rule of law, and any defense of any kind which it may now or hereafter have with respect to this Guaranty or the obligations of the Contractor under the Agreement, except any Notice to the Contractor required pursuant to the Agreement or Applicable Law which Notice preconditions the Contractor's obligation or the defenses listed in Section (8) below.
- 8) To the extent that it may lawfully do so, the Guarantor hereby further agrees to waive, and does hereby absolutely and irrevocably waive and relinquish, the benefit and advantage of, and does hereby covenant not to assert, any appraisalment, valuation, stay, extension, redemption or similar laws, now or at any time hereafter in force, which might delay, prevent or otherwise impede the due performance or proper enforcement of this Guaranty, the Agreement, or the obligations of the Contractor under the Agreement, and hereby expressly agrees that the right of the City hereunder may be enforced notwithstanding any partial performance by the Contractor or the Guarantor, or the foreclosure upon any security (including, with limitation, any performance bond) given by the Contractor for its performance of any of its obligations under the Agreement.

f. Agreements between City and Contractor; Waivers by City.

The Guarantor agrees that, without the necessity for any additional endorsement or Guaranty by or any reservation of rights against Guarantor and without any further assent by Guarantor, by mutual agreement between the City and Contractor, the City and Contractor may, from time to time

- 1) New, modify or compromise the liability of the Contractor for or upon any of the obligations hereby Guaranteed; or
- 2) Consent to any amendment or change of any terms of the Agreement; or
- 3) Accept, release, or surrender any security (including, without limitation, any performance bond), or
- 4) Grant any extensions or renewals of the obligations of the Contractor under the Agreement, and any other indulgence with respect thereto, and to effect any release, compromise or settlement with respect thereto, all without releasing or discharging the liability of Guarantor hereunder.

The Guarantor further agrees that the City or any of its assigns shall have and may exercise full power in its uncontrolled discretion, without in any way affecting the liability of the Guarantor under this Guaranty, to waive compliance with and any default of the Contractor under, the Agreement.

g. Continuing Guaranty.

This Guaranty is a continuing Guaranty and shall continue to be effective or be reinstated, as applicable, if at any time any payment of any of the obligations hereby Guaranteed is rescinded or is otherwise required to be returned upon reorganization, insolvency or bankruptcy of the Contractor or Guarantor or otherwise, all as though such payment had not been made.

h. Defenses.

Notwithstanding any provision in this Guaranty to the contrary, the Guarantor may exercise or assert any and all legal or equitable rights, defenses, counter claims or affirmative defenses under the Agreement or Applicable Law which the Contractor could assert against any party seeking to enforce the Agreement against the Contractor, and nothing in this Guaranty shall constitute a waiver thereof by the Guarantor.

i. Payment of costs of enforcing Guaranty.

Guarantor agrees to pay all costs, expenses and fees, including all reasonable attorney's fees, which may be incurred by the City in enforcing this Guaranty following the default on the part of the Guarantor hereunder whether the same shall be enforced by suit or otherwise.

j. Enforcement.

The terms of this Guaranty may be enforced as to any one or more breaches either separately or cumulatively.

k. Remedies cumulative.

No remedy herein conferred upon or reserved to the City hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Guaranty and the Agreement or hereinafter existing at law or in equity or by statute.

l. Severability.

The invalidity or unenforceability of any one or more phrases, sentences or clauses in this Guaranty contained shall not affect the validity or enforceability of the remaining portions of this Guaranty, or any part thereof.

m. Amendments.

No amendment, change, modification or termination of this Guaranty shall be made except upon the written consent of Guarantor and the City.

n. Term.

The obligations of the Guarantor under this Guaranty shall remain in full force and effect until (i) all monetary obligations of the Contractor under the Agreement shall have been fully performed or provided for in accordance with the Agreement, or (ii) the discharge, release or other excuse of said obligations in accordance with the terms of the Agreement.

o. No set-offs, etc.

By Guarantor. The obligation of Guarantor under this Guaranty shall not be affected by any set-off, counterclaim, recoupment, defense or other right that Guarantor may have against the City on account of any claim of the Guarantor against the City; provided that Guarantor reserves the right to bring independent claims not arising from the Agreement against the City so long as any such claims shall not be used to set-off or deduct from any claims which the City may have against the Guarantor arising from this Guaranty.

By Contractor. The obligation of Guarantor under this Guaranty shall be subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor may assert pursuant to the Agreement, if any, but the obligation of Guarantor under this Guaranty shall not be subject to any set-off, counterclaim, recoupment, defense or other right that the Contractor may assert independently of and outside the Agreement.

p. Warranties and representations.

The Guarantor warrants and represents that as of date of execution of this Guaranty:

- 1) The Guarantor has the power, authority and legal right to enter into this Guaranty and to perform its obligations and undertakings hereunder, and the execution, delivery and performance of this Guaranty by the Guarantor (i) have been duly authorized by all necessary corporate and shareholder action on the part of the Guarantor, (ii) have the requisite approval of all federal, State and local governing bodies having jurisdiction or authority with respect thereto, (iii) do not violate any judgment, order, law or regulation applicable to the Guarantor; (iv) do not conflict with or constitute a default under any agreement or instrument to which the Guarantor is a party or by which the Guarantor or its assets may be bound or affected; and (v) do not violate any provision of the Guarantor's articles or certificate of incorporation or by-laws.
- 2) This Guaranty has been duly executed and delivered by the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms; and
- 3) There are no pending or, to the knowledge of the Guarantor, threatened actions or proceedings before any court or administrative agency which would have a material adverse effect on the financial condition of the Guarantor, or the ability of the Guarantor to perform its obligations or undertakings under this Guaranty.

q. No merger; no conveyance of assets.

Guarantor agrees that during the term hereof in accordance with Section (N) Guarantor shall not consolidate with or merge into any other corporation where the shareholders of the Guarantor yield control of the Guarantor, or a majority interest in the Guarantor, to the newly formed corporation, or convey, transfer or lease all or substantially all of its properties and assets to any person, firm, joint venture, corporation and other entity ("Person"), unless the City consents thereto in accordance with Section (C) above.

r. Counterparts.

This Guaranty may be executed in any number of counterparts, some of which may not bear the signatures of all parties hereto. Each such counterpart, when so executed and delivered, shall be deemed to be an original and all of such counterparts, taken together, shall constitute one and the same instrument; provided, however, that in pleading or proving this Guaranty, it shall not be necessary to produce more than one copy (or sets of copies) bearing the signature of the Guarantor.

s. Notices.

All notices, instructions and other communications required or permitted to be given to or made upon any party hereto shall be in writing, and shall be given in the manner and to the addresses provided in the Agreement.

t. Separate suits.

Each and every payment default by Contractor under the Agreement shall give rise to a separate cause of action under this Guaranty, and separate suits may be brought hereunder by the City or its assigns as each cause of action arises.

u. Headings.

The Section headings appearing herein are for convenience only and shall not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Guaranty.

v. Entire Agreement.

This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

w. Personal Liability.

It is understood and agreed to by the City that nothing contained herein shall create any obligation or right to look to any director, officer, employee or stockholder of the Guarantor (or any affiliate thereof) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this guaranty shall be taken against any such director, officer, employee or stockholder.

Republic Services, Inc.



By: Assistant Treasurer

EXHIBIT 9.03**FIDELITY BOND**

Contractor shall forthwith provide upon demand the fidelity bond required by Section 11.04, naming the City as insured against loss due to fraudulent or dishonest acts of Contractor's employees. Contractor represents and warrants that the bond is in the principal sum required by Exhibit 9.01 and is executed as surety by a corporation admitted to issue surety bonds in the State of California, subject to regulation by the California Insurance Commissioner. City acknowledges that the financial condition and record of service of such corporation is satisfactory.

EXHIBIT 10.01**LIVING WAGE**

Contractor shall compensate any employee of Contractor who provides services under this Agreement in accordance with the City of Oxnard Living Wage Policy. Contractor shall pay each such employee no less than \$14.15 an hour for the time during which the employee is providing services to the City and 96 hours of paid leave per every calendar year in which an employee provides services to the City. On July 1, 2012 and each July 1 thereafter that this Agreement is in effect, Contractor shall adjust the most recent hourly rate as provided in the Living Wage Policy.

Contractor agrees to post, at a location readily accessible to those employees providing services to the City, a copy of the Living Wage Policy adopted by the Oxnard City Council on July 9, 2002 and effective October 1, 2002.

In addition, if Contractor fails to comply with the Living Wage Policy in any manner, Contractor shall pay to any employee providing services under this Agreement the amount or value of the compensation owed to such employee as provided in paragraph a., above. Contractor shall pay such amount within 15 days after (i) Contractor discovers such failure or (ii) City Manager or designee provides written notice to Contractor of the amount owed.

EXHIBIT 11.01**MINIMUM TRAINING QUALIFICATION**M = Mandatory topicAA = As applicable based on specific job titleNR = Not required**Table 1 General Orientation Training**

Topics marked "M" in table 1 and Table 2 must be performed and satisfactorily completed during orientation prior to the employee engaging in work activities. May also be used as remedial training topics. See Table 2 for special skills training.

Equipment Operator		Spotter	Mechanic	Temp Labor	Office / Sales	Baler Operator	Line Sorter	Scale house Clerk
Fire extinguisher / hot load	M	AAAA	M	AA	M	M	M	M
Fire prevention	M	AA	M	AA	M	M	M	M
Safety Glasses and gloves	M		M	M	NR	M	M	AA
Blood borne Pathogens	M	M	M	M	M	M	M	M
Heavy Equipment Operation	M	M	M	M	NR	NR	NR	NR
Hazard Communication (Right to Know)	M	M	M	M	M	M	M	M
Heat stress part 1	M	M	M	M	M	M	M	M
Emergency Response & Evacuation	M	M	M	M	M	M	M	M
Lockout - Tagout	M	M	M	M	M	M	M	M
Personal protective equipment	M	M	M	M	M	M	M	M

Exhibits to Republic Services Management, Operations, and Marketing Agreement

Equipment Operator		Spotter	Mechanic	Temp Labor	Office / Sales	Baler Operator	Line Sorter	Scale house Clerk
Confined space awareness	M	M	M	M	M	M	M	M
Confined space - permit required entry	AA	NR	AA	NR	NR	AA	AA	AA
	M	M	M	AA	M	M	M	M
Flammable / combustible liquids								
Emergency spill response	M	M	M	NR	NR	M	M	NR
Alcohol & Substance abuse awareness	M	M	M	NR	M	M	M	M
Safe lifting procedures	M	M	M	M	M	M	M	M

Table 2 - SPECIAL SKILLS TRAINING

Required initial training during orientation (prior to beginning work activities) in addition to topics identified as mandatory (M) in Table 1. May also be used as remedial training topics.

Mechanic		Transfer Station/MRF operating personnel	Office / Sales
Rear End Loader Packer Usage	M	NR	NR
Allison Automatic Transmission Usage	M	NR	NR
Battery Charging and Boost Charging	M	M	NR
Chemical Toilets	NR	NR	NR
Container Delivery Boom Usage	M	NR	NR
Dual Drive Chassis Usage	M	NR	NR
Extricating Foreign Material	M	AA	NR
Front Loader Usage	NR	NR	NR
Grinding & Spray Painting	M	AA	NR
Entry / Exit from Cab	M	AA	NR
Rear End Loader Usage	NR	NR	NR
Roll off Usage	NR	AA	NR
Rear End Loader Helper Safety	NR	NR	NR
Tire Maintenance - removal / repair	M	AA	NR
Towing	M	AA	NR

Mechanic		Transfer Station/MRF operating personnel	Office / Sales
Stationary Compactors, Balers, Conveyors	M	M	NR
Horseplay hazards	M	M	NR
Housekeeping	M	M	M
Salvaging policy	M	M	NR
Compressed air safety	M	AA	NR
Working around heavy equipment	M	M	NR
Special / hazardous waste identification	NR	M	M
Wheel chocking	M	M	NR
Pre / post trip vehicle inspection procedures	M	NR	NR
Fit for duty	M	M	NR
Bin Handling	NR	AA	NR
Auto tarpers	M	NR	NR
Clearance hazards	M	AA	NR
Cell phone use	M	NR	M
Landfill safety	AA	AA	AA
Danger zones	M	M	M
Eye contact & hand signals	AA	M	NR
Excavation	NR	NR	NR

Mechanic		Transfer Station/MRF operating personnel	Office / Sales
Ergonomics – Per job classification	M	M	M
Enhanced visibility	M	M	NR
Fall protection	M	AA	NR
Welding / cutting / brazing	M	NR	NR
Downed electrical wires	M	NR	NR
Hand & power tool safety	M	AA	NR
Transfer station safety	AA	AA	AA
Cranes, chains and slings	M	AA	NR
Heavy equipment operations	AA	AA	NR
Machine guarding	M	AA	NR
Basic electrical safety	M	M	M
Fleet safety	M	NR	NR
Container placement	NR	NR	AA
Driver, Helper & Equipment Operator Safety Guide	NR	AA	NR
Flammable / Combustible liquids	M	M	M
Walking / working surfaces	M	M	NR
Traffic Control	M	M	M

Mechanic		Transfer Station/MRF operating personnel	Office / Sales
Contractor and visitor safety	AA	AA	NR
Confined space - permit required	NR	NR	M
Asbestos handling / hauling requirements (every 3 years)	M	M	NR
	M	NR	NR
Fall Protection	M	AA	NR
Dog Bite Prevention	AA	NR	NR
Abrasive Wheel Safety	AA	AA	AA
Power Generation	NR	M	NR
Rodent control	M	M	NR
Blind Spots - Equipment Operators	M	M	NR
Shop Safety	NR	M	NR
Needle Sticks - MRF	NR	M	NR
Plant Safety - MRF & Transfer Station	M	M	M
Plant Safety - MRF Equipment	AA	AA	AA
Danger Zone 2	M	M	AA
Rattlesnake Awareness	M	M	M
High Visibility	M	M	M