

FRANCHISE AGREEMENT
between the
CITY OF AGOURA HILLS
and
G.I. INDUSTRIES and
USA WASTE OF CALIFORNIA
for
INTEGRATED EXCLUSIVE RESIDENTIAL WASTE
MANAGEMENT SERVICES

* * *

_____, 2007

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Exhibits

1. Initial Rates
2. Corporate Guarantee
3. Faithful Performance Bond
4. Non-Collusion Affidavit

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT FOR INTEGRATED RESIDENTIAL WASTE MANAGEMENT SERVICES ("Agreement") is effective as of the ____ day of _____ 2007, and is entered into by the City of Agoura Hills ("City") and G.I. Industries, Inc., a Utah corporation and USA Waste of California, Inc., a Delaware corporation, a Waste Management company ("Company").

RECITALS:

- A. The Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (the "Act", California Public Resources Code Sections 40000 et seq.) has declared that it is in the public interest to require local agencies to make adequate provision for solid waste handling within their jurisdictions to meet the goals and objectives of the Act.
- B. In accordance with the Act, the City is required to implement its Source Reduction and Recycling Element ("SRRE") in order to maintain the diversion of 50 percent of solid waste collected in the City from landfill disposal.
- C. In accordance with California Public Resources Code Section 40059(a)(2) and 49300 et seq., the City has determined that the public health, safety, and welfare require that an exclusive franchise be awarded to a qualified solid waste enterprise for the collection, transportation, recycling, processing, and disposal of residential solid waste, and for other related services, to meet the goals and objectives of the Act.
- D. The City and Hillside Rubbish Company, Company's predecessor-in-interest, entered into that certain Agreement for Residential Solid Waste and Recyclable Materials Collection Services dated November 17, 1993, which was subsequently amended on September 6, 1995, and further amended on December 18, 2000 (as amended, the "1993 Agreement"). The 1993 Agreement expires on December 1, 2007.
- E. The Company agrees to properly dispose of all solid waste collected for residential accounts in the City pursuant to the terms of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 DEFINITIONS

- 1.1** Whenever any term used in this Agreement has been defined by the provisions of Article V, Chapter 3 of the Agoura Hills Municipal Code, or by Division 30, Part 1, Chapter 2 of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code will apply unless the term is otherwise defined in this Agreement, in which case this Agreement will control.

The following capitalized words and terms have the following meanings:

1.1.1 Act

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

1.1.2 Administration Fee

“Administration Fee” means the fee paid by the Company to the City for the right to exercise the franchise granted by this Agreement.

1.1.3 Applicable Law

“Applicable Law” means all laws, regulations, rules, orders, judgments, decrees, permits, approvals, or other requirement of any governmental agency having jurisdiction over the collection and disposition of Solid Waste and Recyclable Materials that are in force on the Effective Date and as they may be enacted, issued or amended during the term.

1.1.4 Bulky Waste

“Bulky Waste” means discarded furniture (including chairs, sofas, mattresses, and rugs); appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items, commonly known as “white goods”); wood waste, tree trunks, and large branches if no longer than two feet in diameter and four feet in length; scrap wood, rocks, sod and earth, in the aggregate not exceeding one cubic yard per collection; clothing; and tires. Bulky wastes do not include such things as car bodies or construction and demolition waste, or any other items that cannot be handled by two persons.

1.1.5 City

“City” means the City of Agoura Hills, a municipal corporation, and all the territory lying within the municipal boundaries of the City as presently existing or as these boundaries may be modified during the term of this Agreement.

1.1.6 City Manager

“City Manager” means the City Manager of the City of Agoura Hills or his/her designee.

1.1.7 Company

“Company” means G.I. Industries, Inc., a Utah corporation and USA Waste of California, Inc., a Delaware corporation, a Waste Management company, and its officers, directors, employees, agents, subsidiaries, and subcontractors. G.I. Industries, Inc. and USA Waste of California, Inc. are affiliated companies, and both are subsidiaries of Waste Management Holdings, Inc.

1.1.8 Construction and Demolition Waste

“Construction and Demolition Waste” means used or discarded construction materials removed from premises during the construction or demolition of a structure. This includes but is not limited to building waste materials, asphalt, concrete, drywall, metals, roofing materials, soils, wood, packaging, and rubble resulting from construction, remodeling, repair and demolition operations on driveways, residential houses, and multi-family residential properties.

1.1.9 Disposal Site

“Disposal Site” means any solid waste handling facility or facilities used for the final disposal of solid waste collected by the Company.

1.1.10 Effective Date

“Effective Date” means the date set forth in the preamble to this Agreement.

1.1.11 Environmental Laws

“Environmental Laws” means all federal and state statutes, county and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Toxic Substances Control Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as later amended, and all rules and regulations promulgated thereunder.

1.1.12 E-Waste

“E-Waste” means electronic products nearing the end of their useful life. This includes but is not limited to computers, televisions, VCR’s, stereos, copiers, fax machines and other electronic products.

1.1.13 Green Waste

“Green Waste” means organic wastes generated from residential and commercial residential premises associated with landscaping and no longer useful or wanted. Items include, but are not limited to leaves, grass, weeds, and wood materials from trees and shrubs, and similar materials that fit within a cart

and are generated at any premises. Yucca leaves, palm fronds, tree stumps and tree roots are not considered green waste.

1.1.14 Hazardous Substance

“Hazardous Substance” means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as “hazardous substances”, “hazardous materials”, “hazardous wastes”, “toxic waste”, “pollutant,” “toxic substances,” or similarly identified as hazardous to human health or the environment, in or pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; or (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated under those specified statutes or acts that are currently existing or may later be enacted; and (c) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or later enacted, including, without limitation, friable asbestos, polychlorinated biphenyls (“PCBs”), petroleum, natural gas, synthetic fuel products, and by-products.

1.1.15 Hazardous Waste

“Hazardous Waste” means all substances that are defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in Health and Safety Code §§25110.02, 25115, and 25117 and Public Resources Code Section 40141, or in any future amendments to or recodifications of these statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency (EPA), pursuant to the Federal Resource Conservation and Recovery Act (42 USC §6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

1.1.16 Holiday shall mean:

New Years Day

Memorial Day

Independence Day

Labor Day

Veteran’s Day (If Landfill is closed)

Thanksgiving Day

Christmas Day

“Holiday” shall also mean any other day designated as such by City and Company.

1.1.17 Net Revenues

“Net Revenues” means gross receipts from the sale of recyclable materials, after deduction of twenty five percent (25%) thereof for all costs of Company relating to recycling hereunder, including without limitation costs of collection, processing, transportation, labor, public relations and other costs incurred in operation of the curbside recycling program, irrespective of whether such costs are more or less than 25% of gross receipts.

1.1.18 Operative Date

“Operative Date” has the meaning ascribed in Section 2.3.

1.1.19 Participation in Recycling or Participation.

Participation in recycling or participation means the setting out of more than one type of recyclable material from residential premises by the residential householder at least one (1) time per week for collection by Company as provided by this Agreement.

1.1.20 Processing

Processing shall mean the reduction, separation, recovery, conversion or recycling of solid waste.

1.1.21 Recyclable Materials

“Recycling Materials” means the following materials generated in or emanating from residential or commercial premises and no longer useful or wanted thereon: glass jars and bottles; steel, bi-metal, and tin cans; empty aerosol containers; PET plastic; HDPE plastic; plastics types 3 – 7; plastic bags, shrink wrap, plastic toys and tools, and other plastic materials (if readily identifiable as being recyclable and delivered to a drop-off center); juice boxes and milk cartons (aseptic packaging, Tetra Pak[®] and waxed cardboard); scrap metal, coat hangers and metal foil; newspaper; mixed paper (e.g., ledger, computer, junk mail, magazines, paperback books, cereal boxes, envelopes, paper shopping bags and non-metallic wrapping paper); and telephone books, and such additional materials as the City Council may designate from time to time.

1.1.22 “Recyclable Materials Container

“Recycling Materials Container” means a container provided by the Company for use in collecting and moving recyclable materials to curbside for collection by Company. The recycling container shall have a minimum capacity of 64 gallons. The container shall indicate the type of material that can be placed in the container and be identified as a recycling container with a recycling logo. The type, color and design of the container shall be subject to approval by the City Manager.

1.1.23 Recycling

“Recycling” means any process by which materials that would otherwise become solid waste are collected (whether source-separated, co-mingled, or as mixed waste), separated or processed and returned to the economic mainstream in the form of raw materials or products or materials that are salvaged or recovered for reuse.

1.1.24 Residential Account

“Residential Account” means an account for solid waste collection and recycling services provided to any Residential Premises.

1.1.25 Residential Householder

“Residential Householder” means any person holding and/or occupying residential premises, whether or not the owner, singly, or with his or her family, in the City.

1.1.26 Residential Premises

“Residential Premises” means all property which is used for residential purposes within the City, including single-family premises, multi-family premises, apartment houses, condominiums, mixed condominiums and rental housing, senior citizen housing complexes, mobile home parks, and trailer parks.

1.1.27 Solid Waste

“Solid Waste” has the meaning defined in Public Resources Code §40191, including all putrescible and nonputrescible solid and semi solid waste, generated in or upon, related to the occupancy or, remaining in or emanating from residential premises or commercial premises, including recyclable materials, garbage, trash, refuse, paper, rubbish, ashes, industrial waste, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid wastes, other solid and semisolid waste, excluding liquid wastes, abandoned vehicles, hazardous and medical waste.

1.1.28 Solid Waste Container

“Solid Waste Container” means a cart made of metal, hard rubber or plastic with handles and with a capacity no less than thirty five (35) gallons and no greater than ninety five (95) gallons, having a hinged lid and wheels, that is serviced by an automated or semi-automated side-loading truck for standard curbside residential collection. Cart size is plus/minus 10% depending on manufacturer. Carts shall be made from a minimum of 15% recycled content plastic.

For multi-unit residential premises where carts for individual units are not feasible, metal bins sized from one to six cubic yards may be used. Bins shall have hinged lids and wheels. Lids are to remain closed at all times. Bins are serviced by front loading trucks.

1.1.29 Solid Waste Handling

“Solid Waste Handling” or “Handling” means the collection, transportation, storage, transfer, or processing of solid wastes.

1.1.30 Solid Waste Handling Services

“Solid Waste Handling Services” means the collection, transportation, storage, transfers, or processing of solid wastes for residential users or customers.

1.1.31 Special Waste

“Special Waste” means solid waste that is a “designated waste” under applicable law, is required to be accompanied by a written manifest or shipping document describing the waste under applicable law, or requires special handling at any processing facility or disposal site.

1.1.32 Universal Waste

“Universal Waste” means waste materials that are conditionally exempt from classification as hazardous waste pursuant to Title 22 of the California Code of Regulations (22 CCR), section 66261.9, including but not limited to *batteries*, computers and peripherals, printers, CRT monitors, televisions, electronic equipment, and cathode ray tubes.

ARTICLE 2 GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise; Termination of Prior Agreements

- A. Subject to the terms and conditions of this Agreement, the City grants to the Company an exclusive franchise to collect, transfer, transport, recycle, process, and dispose of all solid waste generated at all residential premises.
- B. The Company accepts the franchise on the terms and conditions set forth in this Agreement.
- C. The parties agree that, upon the Operative Date, this Agreement supercedes all prior agreements related to the subject matter hereof, including but not limited to the 1993 Agreement, and that all such prior agreements are of no further force or effect, except for indemnity obligations arising under the prior agreement before the Operative Date.

2.2 Exclusive Nature of Franchise

- A. During the term of this Agreement, except as otherwise provided in Section 2.7, or as may otherwise be provided by federal or state law, the rights granted to the Company under this Agreement will be exclusive to the Company.
- B. The City will protect the Company's exclusive rights by appropriate ordinances, and by reasonable enforcement of those ordinances. If, at the request of the Company, the City takes administrative, law enforcement, or other legal action against any person who infringes on the Company's exclusive rights, the Company shall reimburse the City for its reasonable administrative, law enforcement, or legal costs related to any such action. Nothing herein precludes the Company from taking such legal action against third parties as it deems appropriate to protect its rights under this Agreement.

2.3 Operative Date

The operative date of this Agreement is July 1, 2007. The Operative Date is the date upon which the Company shall commence to provide the integrated residential waste management services that are authorized by this Agreement.

2.4 Term of Agreement

2.4.1 Term

The term of this Agreement commences on the Effective Date and expires on June 30, 2013, unless earlier terminated pursuant to subsection Section 2.4.2 or otherwise, or unless extended pursuant to subsection 2.4.3.

2.4.2 Review and Automatic Extension

- A. Subject to the provisions of paragraph B of this Section 2.4.2, on June 30, 2010 the term of this Agreement shall be automatically extended for

three (3) additional years commencing on July 1, 2010 and terminating on June 30, 2013.

- B. Either City or Company shall have the right to avoid the automatic extension period, by delivering written notice to the other party no later than April 1, 2010. The notice shall detail the reasons why the automatic extension is not to proceed. Any such notice from the City shall be based on the results of a performance review conducted pursuant to either Section 6.5 or Section 6.6. Upon delivery of such notice, the term of this Agreement shall not be extended by operation of paragraph A of this subsection 2.4.2, and shall terminate on June 30, 2010, without need for further notice.

2.4.3 Optional Extension

Upon the mutual agreement of the parties, expressed in a writing executed by both parties, the term of this Agreement may be extended for three additional years, commencing on July 1, 2013 and terminating on January 30, 2016.

2.5 Conditions to Effectiveness of Agreement

The effectiveness of this Agreement, and the performance of the City's obligations, are subject to the satisfaction of all conditions set out below, any of which may be waived by the City in whole or in part:

- A. Accuracy of Representations. Representations and warranties made by the Company in this Agreement are true and correct as of the Operative Date.
- B. Furnishing of Insurance and Bonds. The Company has furnished evidence satisfactory to the City Manager of the insurance and bonds required by Article 9.
- C. Effectiveness of City Council Action. The City's resolution approving this Agreement has become effective under California law prior to the Operative Date of this Agreement.

2.6 Delegation of Authority

The administration of this Agreement by the City will be under the supervision and direction of the City Manager. Any and all actions specified in this Agreement, unless otherwise stated, will be taken by the City Manager.

2.7 Limitations on Scope of Franchise

- A. The franchise granted to the Company is exclusive, except for the categories of solid waste listed in this Section 2.7. The granting of this franchise does not preclude the categories of solid waste listed below from being delivered to, collected, and transported by others, provided that no person is excused from obtaining from the City any authorization that is required by law:
 - 1. Source Separated Recyclable Materials that a customer sells to, or otherwise receives compensation from, other persons in a manner resulting in a net payment to the customer.

2. Solid waste, including recyclable materials and green waste, which is removed from any premises by the customer, and which is transported personally by the customer (or by the customer's full-time employees) to a processing or disposal facility.
 3. Green waste removed from premises by a gardening, landscaping, or tree trimming company using its own equipment and employees as an incidental part of a total service offered by the company, as opposed to a hauling service.
 4. Construction and demolition waste that is incidentally removed by a duly-licensed construction or demolition company, or as part of a total service offered by such licensed company or by the City, and where the licensed company uses its own equipment and employees.
 5. Solid waste, including recyclable materials and green waste from commercial and Industrial premises.
 6. Animal waste and remains from any slaughterhouse or butcher shop for use as tallow.
 7. By-products of sewage treatment, including sludge, sludge ash, grit and screenings.
 8. Hazardous waste and radioactive waste, regardless of its source.
 9. The casual or emergency collection, removal, disposal, or diversion of solid waste by the City through its officers or employees in the normal course of their employment.
 10. Universal Waste.
- B. The Company acknowledges that the City may permit other persons besides the Company to collect the types of solid waste listed in this Section 2.7, including recyclable materials, without obtaining any approval of the Company.
- C. The grant to the Company of this exclusive franchise will be interpreted in a manner consistent with state and federal laws. The scope of this exclusive franchise will be limited by current and developing state and federal laws with regard to solid waste handling, control of recyclable materials, solid waste flow control, and related matters. If future interpretations of current law, or the enactment of new laws or local ordinances, limit the ability of the City to lawfully provide for the scope of franchise services specifically set forth, the Company agrees that the scope of the franchise will be limited to those services that may be lawfully provided, and the City will not be responsible for any lost profits that may be claimed by the Company. In that event, it is the responsibility of the Company to minimize the financial impact to whatever extent is reasonably feasible.

2.8 City's Right to Direct Changes

2.8.1 General

The City may direct the Company to perform additional services (including new diversion programs, etc.), or to modify the manner in which it performs existing services or bills for services. Pilot programs and innovative services that may entail new collection methods, different kinds of services or new requirements for customers, are included among the kinds of changes that the City may direct. The Company will be entitled to an adjustment in its compensation for providing those additional or modified services.

2.8.2 New Diversion Programs

In conjunction with the requirements of Section 2.8.1, the Company must present, within 30 days of a request from the City, a proposal to provide additional or expanded diversion services. The proposal must contain a complete description of the following:

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

2.8.3 City's Right to Acquire Services

The Company acknowledges that the City may permit other persons to provide additional solid waste services not otherwise provided for in this Agreement. If the Company and the City cannot agree on terms and conditions for additional or expanded diversion services within 90 days from the date when the City first requests a proposal from the Company to perform those services pursuant to Section 2.8.2, the City may authorize persons other than the Company to provide those services. If the City exercises its right to authorize third parties to provide those services, and if that decision reduces or eliminates Company's collection services as contemplated under Company's proposal and Article 3 of this Agreement, Company will reduce its billings proportionately.

2.9 Ownership of Solid Waste

Except as otherwise provided in state law, when solid waste is collected from containers placed at the designated collection location, ownership and the right to possession will transfer directly from the customer to the Company by operation of this Agreement. Subject to the Company's obligation to meet the source reduction and recycling goals that apply to the City, and the City's rights under Section 3.6, the Company has the right to retain, recycle, process, dispose of, and otherwise use that solid waste, or any part thereof, in any lawful fashion or for any lawful purpose. Subject to the provisions of this Agreement, the

Company has the right to retain any benefit resulting from its right to retain, recycle, process, dispose of, or reuse the solid waste, green waste, and recyclable materials that it collects. The City may obtain ownership or possession of solid waste placed for collection upon written notice of its intent to do so; however, nothing in this Agreement may be construed as giving rise to any inference that the City has such ownership or possession unless written notice has been given to the Company.

2.10 Company Status

The Company represents and warrants that it is duly organized, validly existing, and in good standing under the laws of Utah and Delaware, that it is qualified to transact business in the State of California and has all necessary licenses, permits, and certifications to provide the services required by this Agreement.

2.11 Company Authorization

The Company is authorized to enter into and perform its obligations under this Agreement. The Board of Directors of the Company has taken all actions required by law, the articles of incorporation, the bylaws, or otherwise, to authorize the execution of this Agreement. The persons signing this Agreement on behalf of the Company have authority to do so.

2.12 Annexations

This Agreement will extend to any territory annexed to the City during its term, except to the extent that collection by the Company within that annexed territory would violate the provisions of Public Resources Code Section 49520. In that event, this Agreement will become effective as to that area at the earliest possible date authorized by law, and the City will cooperate with the Company to fulfill any requirement necessary for the Company to serve the annexed area consistent with this section.

ARTICLE 3 DIRECT SERVICES

3.1 Solid Waste Collection Services

- A. The work to be performed by the Company includes, but is not limited to, the furnishing of all labor, supervision, equipment, materials, supplies, and other items necessary to perform the services required. The designation of, and specification of requirements for, particular items of labor or equipment does not relieve the Company of the duty to furnish all others, as may be required, whether or not identified elsewhere in this Agreement.
- B. The work to be performed by the Company will be performed in a thorough and professional manner so that customers within the City are provided with reliable, courteous, and high-quality solid waste, recyclable materials and green waste collection services at all times during the term of this Agreement.

3.1.1 Automated Cart Service

- A. Company must collect Solid Waste delivered for collection at the curbside by residential accounts not less than once each calendar week. Not more than seven (7) days shall elapse between collections. The Company shall offer residential householders service levels chosen from the following table:

Service Level	Solid Waste Cart (in Gallons)	Recycling Cart (in Gallons)	Green Waste Cart (In Gallons)
Mini-Can	32	65	95
Basic	65	65	95
Level Two	95	65	95
Level Three	2 Basic Carts	65	95
Level Four	1 Basic Cart + 1 Level 2 Cart	65	95
Level Five	2 Level 2 Carts	65	95

The Company shall set the rate for the lowest level of service based on free market forces; the initial rate is set forth in Exhibit 1. The additional cost for each increased level of Solid Waste service shall be at least \$5.00. The additional cost for each increased level of Green Waste Service shall be at least \$3.50.

- B. The designated collection location of carts, if disputed by the customer or the Company, will be determined by the City. Additionally, if in the City's opinion the existing collection location is inappropriate, the City may require the customer or the Company to relocate the collection location.

3.1.2 Permanent Bin Services

Company will provide permanent bin service to residential accounts. Company must collect and remove all solid waste that is placed in bins from the residential accounts receiving bin service, at least once each calendar week or more frequently if such is required to maintain a minimum service standard of one-half cubic yard per residential account per week for bin service. Special consideration will be given when determining the pickup area to ensure that the flow of traffic is not impeded.

3.1.3 On-Call Bulky Waste Pickup

- A. Company will provide bulky waste pickup service to all residential accounts under this Agreement. Customers will provide the Company with 24 hours notice and the items will be collected on the customer's regular collection day or a scheduled appointment day. All Residential customers are entitled to the following at no extra charge:
 - 1. One pick-up per calendar year with four items collected or
 - 2. Two pick-ups per calendar year with two items collected per pick up.
- B. Additional pickups, or additional items per pickup, may be subject to an additional fee to be charged by the Company.
- C. Bulky waste collected by Company may not be landfilled or disposed of until the following hierarchy has been followed by Company:
 - 3. Reuse as is (if energy efficient).
 - 4. Disassemble for reuse or recycling.
 - 5. Recycle (through participation of charitable organizations).
 - 6. Disposal.

3.1.4 Household Hazardous Waste Roundup

Company must promote and conduct one Household Hazardous Waste Round-up programs annually for the collection of household hazardous wastes from the residents of the City. This program must comply with all applicable regulatory requirements, be scheduled on a date mutually acceptable to Company and City, and impose no additional cost upon the City or service recipients. Company will be responsible for all aspects of the program, including but not limited to selecting the location, obtaining all applicable permits, traffic control, on-site security, and public information, as well as collection, packing, transportation, and safe disposal of all household hazardous waste collected. Neither City nor City residents will be designated as the generator.

3.1.5 Universal Waste and E-Waste Collection

Company shall make available to residential accounts an on-call collection service for Universal Waste/E-Waste or develop a drop off program for the residential sector, at a frequency to be determined by the City Manager.

3.1.6 Container Service for City/Community Events/Project

At the request of the City, Company shall provide solid waste and/or recycling container service at no cost for City and/or Community events.

At the request of the City, Company shall provide solid waste containers for City construction projects not to exceed four (4) forty yard boxes in a given year. Boxes can be used either separately or as a one time combination.

3.2 Recycling Services

3.2.1 Automated Cart Collection

- A. Company must provide weekly automated recycling collection to all residential accounts on the same day as solid waste collection. Materials to be collected are as defined herein. Company shall provide each automated solid waste cart customer one 65 gallon recycling cart. Company shall make available one (1) additional recycling cart to residential accounts that regularly recycle more than that which will fit into their existing recycling carts. No extra fee may be charged for recycling service or additional recycling carts, and no discounts given for using smaller or no carts. Company must collect and remove all recyclable materials placed in recycling carts at the curbside.
- B. Some residential accounts may not have sufficient space on-site to accommodate the storage of a 95 or 65-gallon recycling cart. These space-constrained customers shall be provided with 32-gallon recycling carts.

3.2.2 Bin Service

The Company agrees to provide, at no additional charge, recycling collection service to all residential accounts receiving bin service. The Company shall provide recycling bins in sufficient quantities to these residential accounts to meet the recycling needs of each customer.

3.2.3 Construction and Demolition Waste Recycling

The Company shall make reasonable efforts to prevent construction and demolition waste that is suitable for recycling from being taken to a landfill by transporting it to an alternate facility where it will be processed for reuse. Such efforts shall include, but shall not be limited to, contacting and educating building contractors about available recycling services.

3.2.4 Warning Notice

The Company must notify customers who have non-Recyclable Materials in their recycling container, in accordance with procedures to be agreed upon between the City and the Company. If, after following this procedure, the container continues to be contaminated, the Company may remove the recycling container from customers who fail to sort properly and who fail to segregate recyclable materials in accordance with City-approved policy. The Company must report to the City on all warning notices that have been issued, within twenty-four hours of issuing the notice. Sending a copy of the notice(s) to the City Manager's designee via facsimile or electronic mail will satisfy this requirement.

3.2.5 Marketing and Sale of Recyclable Materials

The Company is responsible for the marketing and sale of all recyclable materials collected under this Agreement.

3.3 Green Waste Program

3.3.1 Automated Collection

Company must provide weekly automated curbside collection of green waste to all residential cart accounts on the same day as Solid Waste and recycling collection. Company shall issue to each customer, at no charge, one 95-gallon green waste cart. Company shall make available one or more additional green waste carts at the rate specified in Exhibit 1.

3.3.2 Holiday Tree Collection Program

Company shall conduct an annual holiday tree collection program. The program will include collection from all residential accounts, including multi-family residences. The curbside collection period shall commence on the first collection day after December 25 and will conclude at the same time that the Los Angeles County Sanitation District ends the Christmas Tree Recycling Program at their landfills or on the second Saturday in January whichever is later. The Company shall cooperate with the City in the scheduling and operation of the holiday tree collection program.

3.3.3 Collection from City Parks

Company shall collect and dispose of all solid waste placed in solid waste containers and recyclable material containers from the City Recreation Center and from parks owned and operated by the City and designated by the City Manager at no cost to the City. Collection shall occur in accordance with a schedule which has been approved by the City Manager. Not more than seven (7) days shall elapse between collections within any one park.

3.3.4 End Uses for Green Waste

Company will use reasonable efforts to divert from disposal all green waste materials collected through curbside collection, and through holiday tree collections. The Company will also use reasonable efforts to provide end uses for green waste that maximize diversion credits for the City in accordance with regulations established by the California Integrated Waste Management Board.

3.4 Operations

3.4.1 Schedules

- A. Collection shall take place between the hours of 7am and 6pm on any day of the week, except that no pickups shall be made on Sunday unless specifically authorized in writing by the City Manager. Hours and days of collection are subject to change by the City Council. All collections shall be made as quietly as possible, and the Company shall so conduct its operations hereunder that the noise level shall not exceed 75 decibels when measured at a distance of 25 feet. If the regularly scheduled collection day falls on a defined Holiday, alternate collection will be performed on the following day, unless that day falls on Sunday.

Alternative collection will then be performed on the following Monday. All collection days falling on other legal holidays will remain as scheduled.

- B. The Company must review annually with the City its operation plan outlining the collection routes, intervals of collection, and collection times for all materials collected under this Agreement, upon 30-days written notice by the City requesting such review. More frequent reviews may be required if operations are not satisfactory, based on documented observations or reports of complaints. If the plan is determined by the City to be inadequate, the Company must modify its plan by incorporating changes into a revised plan and reviewing that revised plan with the City within 30 calendar days.

City may request that collection routes be coordinated with City operations. (Street Sweeping, etc.)

3.4.2 Vehicles

- A. **General.** The Company must provide collection vehicles sufficient in number and capacity to perform efficiently the work required by this Agreement in strict accordance with its terms. Any additional vehicles or routes that may be required to meet the service standards during the term of this Agreement will be at the Company's exclusive expense. The Company must have available on collection days sufficient back-up and auxiliary vehicles to respond to any and all complaints and emergencies. All vehicles must be in good condition and must be dust/dirt free, without peeling paint or chipping, and painted in a standard color. The corporate logo/seal must be clearly legible.
- B. **Specifications.** Company must use vehicles that comply with the South Coast Air Quality Management District's Rule 1193, Clean On-Road Residential and Commercial Solid Waste Collection Vehicles. Except where arising from manufacturing and delivery delays beyond the control of Company, 100% of route trucks, excluding spares, shall comply with SCAQMD Rule 1193. At no time during the term of this Agreement may Company use vehicles for the collection of solid waste in the City that are more than 15 years old. All vehicles used by the Company in providing solid waste collection services must be registered with the California Department of Motor Vehicles. All vehicles must have water-tight bodies designed to prevent leakage, spillage, or overflow.
- C. **Vehicle Identification.** The Company's name, local telephone number, and a unique vehicle identification number selected by the Company and approved by the City must be prominently displayed on all vehicles, in letters and numbers no less than three inches high. The Company must not place the City's name or any City logos on the Company vehicles.
- D. **Cleaning and Maintenance**
 - 1. The Company must maintain all of its properties, vehicles, facilities, and equipment used or located in the City in a good, safe, neat, clean, and operable condition at all times.

2. Vehicles used in the collection of solid waste must be painted, thoroughly washed, and thoroughly steam-cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Company must also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Company agrees to replace or repair, to the City's reasonable satisfaction, any vehicle that the City determines in its reasonable judgment to be of unsightly appearance, leaking oil, hydraulic and other applicable fluids, or in unsatisfactory operating condition.
3. The Company must repaint any vehicle used in the collection of solid waste within 60 days' following written notice from the City, if the City determines in its reasonable judgment that its appearance warrants repainting.
4. The Company must inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, must be removed from service until repaired and operating properly. The Company must keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation), and must make those records available to the City upon request.
5. The Company must repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown, or any other cause, so as to maintain all equipment in a safe and operable condition. The Company must maintain accurate records of repair, which will include the date and mileage (or hours of operation), nature of repair, and the verification by signature of a maintenance supervisor that the repair has been properly performed.
6. Upon request by the City, the Company must furnish to the City not later than 30 days after the end of each calendar year, a written inventory of all equipment, including collection vehicles, used in providing service. The inventory must list all equipment by manufacturer, ID number, date of acquisition, type, capacity, and age.

E. Operation.

1. Vehicles must be operated in compliance with the California Vehicle Code, and all applicable local ordinances. The Company may not intentionally load vehicles in excess of limitations on vehicles imposed by state or local weight restrictions.
2. Equipment must comply with U.S. EPA noise emission regulations, currently codified at 40 CFR Part 205, and other applicable noise

control regulations, and must incorporate noise control features throughout the vehicle. In no event may the noise level of equipment used for collection exceed 75 dB when measured at a distance of 25 feet from the vehicle, five feet from the ground. The Company must store all equipment located in the City in safe and secure locations in accordance with the City's zoning regulations.

3. The Company is responsible for providing immediate notification in the event of oil, hydraulic and other applicable fluids spills from vehicles that occur within the City limits.
 4. The Company is responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces, whether or not paved; associated curbs, gutters, and traffic control devices; other public improvements; and private roads and alleys, excluding normal wear and tear.
- F. **City Inspection Per Code.** The California Highway Patrol may cause any vehicle used in the performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with all applicable provisions of the State Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found by the California Highway Patrol to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City may be returned to service until its return to service has been approved by the California Highway Patrol.
- G. **Brake Inspections.** The brake system of each vehicle used in the performance of this Agreement must be inspected and certified by a trained mechanic, who is either a certified mechanic or is under the supervision of a certified mechanic. The Company's facility, used to store and maintain these vehicles used in the performance of this Agreement, must also be certified under state law by the California Highway Patrol. Notice of certification must be filed with the City with the annual report required by Section 6.3.3. Failure to submit the required certification will be grounds for terminating this Agreement.
- H. **Correction of Defects.** Following any inspection, the City Manager has the right to cause the Company, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary, or unsightly. This determination may be appealed to the City Council, whose decision will be final.

3.4.3 Containers

- A. **Cart Design Requirements.** The carts shall be designed and manufactured in accordance with standard industry specifications approved by the City before being placed in service by the Company.

- B. **Cart Ownership and Maintenance Responsibilities.** The Company is responsible for cart repair and maintenance, graffiti removal, and replacing lost, stolen or damaged carts within five (5) business days at no additional charge to the customer or to the City. The Company may, however, charge the customer for repairing or replacing a cart if the damage is due to the customer's willful negligence or abuse. In no event may this charge be greater than the lesser of Company's actual cost for replacement parts or a new cart, or \$50. All carts provided under this Agreement shall become the property of the Company at the end of this Agreement, and the City retains the right to direct the Company to remove the carts at the end of the Agreement at no charge, should the City so desire.
- C. **Bins.**
1. The Company must provide its residential accounts that receive bin service with bin containers for collection of solid waste, and for the collection of recyclable materials or green waste, when requested. The Company must maintain its containers in a clean and sound condition, free from putrescible residue. Containers must be equipped with reflectors to enhance visibility. Containers must be constructed of heavy metal, or other durable material, and must be watertight and well painted. Wheels, forklift slots, and other appurtenances, which are designed for movement, loading, or unloading of the container, must be maintained in good repair. Company must inspect, and if necessary, clean or replace all containers once each year at no charge. Company must perform cleaning or replacement of containers more frequently, if necessary, for an additional fee, to prevent a nuisance caused by odors or vector harborage. Customers may request additional cleanings at price designated between Company and the customer. Company must remove graffiti from any container within five (5) business days of request by City or customers.
 2. Each bin placed in the City by the Company must have the name and phone number of the Company in letters not less than three inches high on the exterior of the container so as to be visible when the container is placed for use. The Company must identify the bin or bins that are assigned to each residential account using a method that is acceptable to the City. Each container must be labeled with a conspicuous warning: "Not to be used for the disposal of hazardous, electronic or universal waste."
- D. **Rolloff Boxes.** The Company must provide clean rolloff boxes, free from graffiti and equipped with reflectors. The Company must properly cover all open rolloff boxes during transport to and from the disposal site.

3.4.4 Litter Abatement

- A. **Minimization of Spills.** The Company must use due care to prevent solid waste or fluids from leaking or being spilled or scattered during the collection or transportation process. If any solid waste or fluids leak, or

are spilled during collection, the Company must promptly clean up those materials. Each collection vehicle must carry a broom and shovel at all times for this purpose. The Company may not, without the City's prior written consent, transfer loads from one vehicle to another on any public street, unless it is necessary to do so because of mechanical failure, accidental damage to a vehicle, or a pre-approved method of solid waste transfer between vehicles. If Company documents three instances of overloaded containers within any six-month period for any customer, Company may adjust the rate charged to the customer to reflect the actual amount of solid waste placed for collection.

- B. **Clean Up.** During the collection or transportation process, the Company must clean up litter in the immediate vicinity of any solid waste storage or collection area under its control or as a result of Company actions. If Company arrives at a residential collection area with existing litter, Company must photo document the pre-existing condition and report the condition to the City Manager. The Company must identify instances of repeated spillage caused by customers and must report those instances to the City Manager. The City shall attempt to rectify such situations directly with the customer, if the Company has already attempted to do so without success. If Company documents three instances of overloaded containers within any six-month period for any customer, Company may adjust the rate charged to the customer to reflect the actual amount of solid waste placed for collection.

3.4.5 Personnel

- A. The Company must furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. All drivers must be trained and qualified in the operation of vehicles they operate and must possess a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.
- B. The Company must establish and vigorously enforce an educational program to train the Company's employees in the identification of hazardous waste. The Company's employees must not knowingly place any hazardous waste in the collection vehicles, nor knowingly dispose of any hazardous wastes at a processing facility or disposal site.
- C. The Company must train its employees in customer courtesy, prohibit the use of loud or profane language, and instruct collection crews to perform all work quietly. The Company must use its best efforts to assure that all employees present a neat appearance and conduct themselves in a courteous manner. If any employee is found to be discourteous or not to be performing services in the manner required by this Agreement, the Company must take all necessary corrective measures including, but not limited to, transfer, discipline, or termination. If the City has notified the Company of a complaint related to discourteous or improper behavior, the

Company shall consider reassigning the employee to duties not involving contact with the public in the City of while the Company is pursuing its investigation and corrective actions.

- D. The Company must provide suitable operations, health, and safety training for all of its employees who use or operate equipment or who are otherwise directly involved in collection or related operations.

3.4.6 Identification Required

- A. The Company must provide its employees, subsidiaries, and subcontractors with identification for all individuals who may have personal contact with residential accounts in the City. The City may require the Company to notify customers annually of the form of that identification. The Company must provide a list of current employees, subsidiaries, and subcontractors to the City Manager upon request.
- B. The City reserves the right to conduct through law enforcement agencies a security and identification check of the Company, and its present and future employees, in accordance with accepted procedures established by the City.

3.4.7 Fees and Gratuities

The Company may not, nor may it permit any agent, employee, or subcontractor employed by it, to request, solicit, demand, or accept, either directly or indirectly, any compensation or gratuity for the collection, transportation, recycling, processing, or disposal of solid waste other than the Company compensation that is normally paid.

3.4.8 Non-Discrimination

The Company may not discriminate in the provision of service or the employment of persons engaged in the performance of this Agreement on account of race, color, religion, sex, age, physical handicap or medical condition in violation of any applicable federal or state law.

3.4.9 Coordination With Street Sweeping Services

The City and the Company will cooperate in coordinating route schedules with the City's street sweeping schedule. Company must provide all routes and route schedules to the City Manager and work with the City to resolve conflicts with street sweeping schedules.

3.4.10 Change in Collection Schedule

- A. The Company must notify the City 45 days prior to, and residential accounts not later than 14 days prior to, any change in collection operations that results in a change in the day on which residential solid waste collection occurs. The Company shall not cause any customer to be without service for more than 7 calendar days in connection with a collection schedule change. The City's approval of any change in residential collection is required prior to such change. This approval shall not be unreasonably withheld.

- B. Any changes in the route map or collection schedule require the prior approval of the City Manager. The City may require changes in the route map or collection schedule to improve service, to resolve complaints, or for other reasons. Route maps to be submitted with the Annual report.

3.4.11 Report of Accumulation of Solid Waste; Unauthorized Dumping

The Company must direct its drivers to note the addresses of any premises at which they observe that solid waste is accumulating and is not being delivered for collection, and the address, or other location description, at which solid waste has been dumped in an apparently unauthorized manner. The Company must deliver the address or description to the City within five working days of such observation. Company shall cooperate with City in the investigation and prosecution of any violations of the Municipal Code.

3.5 Emergency Service

Company shall assist City in the event of major disaster, such as an earthquake, storm, tidal wave (tsunami), riot or civil disturbance, by providing collection vehicles and drivers normally assigned to the City, at the rates provided in Exhibit 1.

3.6 Transportation of Solid Waste

- A. The Company must transport all Solid Waste collected in the City to a properly permitted transfer station, MRF, transformation facility, or disposal site. In addition, the City may designate the use of a particular transfer station, MRF, transformation facility, or disposal site. The Company agrees to make all reasonable efforts to divert single stream Recyclable Materials, source-separated Recyclable Materials, and green waste from landfill disposal. The Company will be entitled to reimbursement to reflect increased costs arising from the City's designation of a transfer station, MRF, transformation facility, or disposal site.
- B. The Company must maintain complete, accurate and up-to-date records of the quantities of solid waste transported to the transfer station, MRF, transformation facility or disposal site and must cooperate with the City in any audits or investigations of those quantities.

3.7 Disposal of Solid Waste and Processing Facilities

Company must ensure that all Solid Waste collected under Section 3.1 is disposed of at a permitted disposal site.

3.7.1. Company has designated Calabasas Landfill and Simi Valley Landfill as the Designated Disposal Sites. Company covenants that Calabasas and Simi Valley landfills are properly permitted, are classified as a Class 3 landfill (permitted to receive only municipal Solid Waste), are in compliance with all Applicable Law, and are not on or being considered for inclusion on a State or federal Superfund list, or CIWMB list of Solid Waste facilities failing to meet State minimum standards. Except as set forth in subsection 3.7.3, Company shall

dispose of all Solid Waste collected in the City at the Designated Disposal Sites, at Company's expense and in accordance with all Applicable Law.

3.7.2 Company has designated Burbank Recycling as the Designated Recycling Facility. Company covenants that the Designated Recycling Facility is properly permitted and in compliance with all Applicable Law. Company shall deliver all Recyclable Materials collected in the City to the Designated Recycling Facility, at Company's expense and in accordance with all Applicable Law. Company shall ensure that, after Processing, Residue material shall not exceed the amount permitted by Applicable Law. Company shall ensure that Recyclable Materials are used in a manner that is classified as Diversion. Company shall contact the City if changes in the recycling facility designation are made.

3.7.3 Company has designated the Calabasas Landfill and Simi Valley Landfill as the Designated Green Waste Facilities. Company covenants that the Calabasas and Simi Valley Landfills are properly permitted for the composting of Green Waste, and are in compliance with all Applicable Law. Company shall deliver all Green Waste collected in the City to the Designated Green Waste Facilities for composting. If any such delivery to the Designated Green Waste Facilities would not result in the City receiving credit in calculating its Diversion Rate for having diverted the Green Waste from Disposal in a landfill or transformation facility, another facility must be selected. Company shall ensure that Green Waste is processed into Compost in accordance with Applicable Law, and used in a manner that is classified as Diversion.

3.7.4 Company shall ensure that the Designated Disposal Sites, Designated Recycling Facility, and Designated Green Waste Facilities are properly permitted and in compliance with Applicable Law at all times during the term. Company shall immediately inform City Manager in writing in the event of any non-compliance, and City, in its sole discretion, shall have the right to require the use of a different Disposal or Processing Facility, to be selected by Company. The City Council may also, in its sole discretion, require the use of a different site at any time during the term if the Designated Disposal Site, Recycling Facilities, or Green Waste Facility (as the case may be) is found to not be in compliance with the provisions of this Section 3.7, and the City Council determines that the Designated Disposal Site, Recycling Facilities, or Green Waste Facility (as the case may be) is not acceptable due to a failure to comply with the terms of this Agreement or a finding by State or federal regulatory agencies that it is not in compliance with Applicable Law, including the Environmental Statutes, and is unable to accept City's Solid Waste, Green Waste or Recyclable Materials (as the case may be). Under no circumstances, however, shall a change in one or more of the Designated Disposal Site, Recycling Facilities, or Green Waste Facility pursuant to this subsection 3.7.4 provide a basis for an increase in the Rates.

3.8 Annual Route Audit

At least once annually, the Company must conduct an audit of its collection routes in the City. The annual route audit must be prepared in form and content acceptable to the City Manager and must include the truck identity, number of accounts serviced, number and size of containers, and the weight of the solid waste delivered to the transfer station or disposal site. Results of the annual route audit will be available for review by the City.

3.9 Service Exceptions; Hazardous Waste Notifications

- A. **Failure to Collect.** When solid waste or recyclable materials are not collected from any residential account, the Company must notify the customer in writing at the time collection is not made, through the use of a “tag” or otherwise, of the reasons why the collection was not made.
- B. **Hazardous Waste Inspection and Reporting.** The Company reserves the right to inspect solid waste or recyclable materials are put out for collection and to reject solid waste or recyclable materials that is observed to be contaminated with hazardous waste. Company has the right not to collect hazardous waste put out with solid waste or recyclable materials. The Company must notify all agencies having jurisdiction, including the California Department of Toxic Substances Control, Local Emergency Response Providers, and the National Response Center, of reportable quantities of hazardous waste that are found or observed in solid waste anywhere within the City. In addition to other required notifications, if any substances are observed that the Company’s employees reasonably believe or suspect to contain hazardous wastes and that have been unlawfully disposed of or released on any City property, including storm drains, streets, or other public rights of way, the Company will immediately notify the Public Works Director.
- C. **Hazardous Waste Diversion Records.** The Company must maintain records showing the types and quantities, if any, of hazardous waste found in solid waste or recyclable materials and which was inadvertently collected from customers within the City, but diverted from landfilling.

ARTICLE 4 OTHER SERVICES

4.1 Services and Customer Billing

4.1.1 Service Description

Company must, within 15 days prior to the effective date of a rate change, prepare and distribute, subject to the direction of the City, a notice to each residential account setting forth the rates charged to the customer, annual holiday schedule, recycling programs offered, and a general summary of services required to be provided under this Agreement and optional services that may be furnished by the Company. This notice shall be in a form that is subject to the approval of the City Manager prior to its distribution. The notice may be included with billings. The notice may also be included as part of the Company's public education plan described in Section 4.3.1.

4.1.2 Residential Billing Discounts

Company shall provide a 15% Senior Citizen Discount to residents 62 years of age or older who own or rent any residential premises unit that is designated as a residential cart account. Company may request proof of residency and age from the customer requesting the discount. Proof of residency and age may be obtained via Department of Motor Vehicles identification card or motor license, and standard utility billing invoices.

4.1.3 Billings to Residential Accounts

Residential Cart Service

The Company shall directly bill all customers with residential cart service on a bi-monthly basis, 30 days in advance. Bills must be itemized by type of service. All bills must carry a due date, and not "due upon receipt." The customers shall be billed in accordance with the approved rate schedule.

Permanent Bin Customers

The Company shall directly bill all customers with permanent bin service on a monthly basis, 30 days in advance. To start service, new customers shall pay a pro-rated amount for the first month's service in advance.

4.1.4 Account Delinquency

Company will provide a residential account with a notice of delinquency in the event of non-payment after forty-five (45) days from the date of a billing. Company may charge interest on any delinquent account at the maximum annual rate allowed by law for such time, as the bill remains unpaid after its due date, and a late fee of \$3.00 per delinquent billing per account. Company will provide the City a list of delinquent accounts upon written request.

4.2 Customer Service

4.2.1 Office Hours

- A. Company must establish and maintain a local business office. Office hours shall be, at a minimum, from 8:00 A.M. to 5:00 P.M., Monday through Friday, excluding holidays. A responsible and qualified representative of the Company must be available at the office during business hours for communication with the public. Normal office hour telephone numbers must be a toll free call. The Company's telephone system must be adequate to handle the volume of calls typically experienced on the busiest days. The Company must also maintain a toll-free telephone number for use during other than normal business hours. The Company must have a customer service representative, or a message service available at the after-hours telephone number. After-hours calls must be responded to on the next business day.
- B. Company must provide City staff with the phone number of a Company representative who may be reached 24 hours a day, 7 days a week, at a location and number readily accessible to City representatives.

4.2.2 Missed Pick-ups

Residential Cart

When notified of a missed pick-up prior to 12:00 noon, the Company must collect the Solid Waste, recyclable materials, or green waste that same day. If notified after 12:00 noon, the Company must collect the solid waste no later than the next business day.

Residential Bin

When notified of a missed pick-up prior to 12:00 noon, the Company must collect the Solid Waste, recyclable materials, or green waste that same day, except in cases where access to containers is blocked on the customer's property. Otherwise, the Company must collect the solid waste no later than the next business day.

4.2.3 Complaint Documentation

- A. All service complaints must be directed to the Company. Daily logs of complaints concerning collection of solid waste must be retained for a minimum of 24 months and must be available to the City at all times upon request.
- B. The Company must log all complaints received by telephone. This log must include the date and time the complaint was received, name, address and telephone number of caller, description of complaint, employee recording complaint, and the action taken by the Company to respond to and remedy complaint. All written customer complaints and inquiries must be date-stamped when received. All complaints must be initially responded to within one business day of receipt. The Company must log action taken by the Company to respond to and remedy all complaints.

- C. All customer service records and logs kept by the Company will be available to the City upon request and at no cost to the City. The City shall, at any time during regular Company business hours, have access to the Company's customer service department for purposes that may include monitoring the quality of customer service or researching customer complaints.

4.2.4 Resolution of Customer Complaints

- A. Disputes between the Company and its customers regarding the services provided under this Agreement may be resolved by the City Manager. The decision of the City Manager shall be final and binding.
- B. Intervention by the City is not a condition precedent to any rights or remedies third parties might otherwise have in any dispute with Company. Nothing in this section is intended to affect the remedies of third parties against the Company.

4.2.5 Government Liaison

The Company must designate in writing a "Government Liaison" who will be responsible for working with the City's designated representatives to resolve customer complaints. City has the right to approve the Company's choice of a liaison.

4.3 Education and Public Awareness

4.3.1 General

Company acknowledges that education and public awareness are essential elements of efforts to achieve the Act's diversion requirements. Accordingly, the Company will implement a public education program to expand public and customer awareness concerning the necessity for methods of reducing, reusing, and recycling solid waste. Company must cooperate fully with City in this regard. Company must submit the public education program for approval by the City Manager no later than fifteen (15) days prior to the Operative Date.

4.3.2 Community Events

At the direction of the City, the Company must participate in and promote recycling and other diversion techniques at community events and designated local activities. This participation would normally include providing, without cost to City, collection of solid waste and recyclable materials at the event and educational information promoting the goals of the City's solid waste diversion and recycling program.

4.4 Waste Generation/Characterization Studies

The Company acknowledges that the City may be required periodically to perform solid waste generation and disposal characterization studies to comply with the Act or other waste diversion requirements. The Company agrees to participate in, and to cooperate with the City and its agents in the preparation of these studies at no additional cost to the City.

ARTICLE 5 COMPANY COMPENSATION AND RATES

5.1 General

- A. The compensation provided for in this Article 5 shall be the full compensation due to the Company under this Agreement for all labor, equipment, materials, supplies, taxes, insurance, bonds, overhead, disposal, transfer, profit and all other things necessary to perform all services required by this Agreement.
- B. The Company shall perform the duties described in this Agreement in consideration of the right to receive compensation for such services rendered at no more than the maximum rates approved by the City.

5.2 Compensation to the Company

The compensation paid to the Company for services rendered from the Operative Date shall not exceed that set forth in Exhibit 1, unless otherwise provided for in a written amendment to this Agreement, or escalated pursuant to subsection 5.4.1. Unless and until the maximum rates set forth on Exhibit 1 are adjusted, the Company shall provide the services required by this Agreement charging no more than the maximum rates authorized by Exhibit 1, except as provided herein.

5.3 Residential Surcharge

In addition to the amount billed by the contractor for services rendered hereunder, each quarterly billing shall include a surcharge in the amount of fifty cents (\$.50) per month. This surcharge shall be collected by the Company and paid to the City quarterly in addition to the fees paid pursuant to Section 4.1. The surcharge shall be deposited by the City into the City's Solid Waste Management Fund.

5.4 Future Adjustments

5.4.1 Escalation

All solid waste rates shall be subject to escalation beginning January 1, 2009. The rate shall be escalated only if the Company is in full and complete compliance with the obligations of this Agreement.

Such escalation shall be calculated by computing the percentage change in the CPI index for the twelve month period ending September 30 of each year, and multiplying the applicable amount to be escalated by 100% (one hundred percent) of that percentage change in the CPI.

"CPI Index" means the Pacific Cities and City Average All-Items Index (Los Angeles-Anaheim-Riverside), All Urban Consumers, for the Los Angeles-Anaheim-Riverside Area, as published by the United States Department of Labor, Bureau of Labor Statistics.

The Company shall deliver to the City notification of the rate escalation, with supporting data and calculations, by October 30 prior to the rate increase becoming effective. Failure of the Company to escalate its rates pursuant this

subsection 5.4.1 in any one year shall result in the Company waiving its right to escalate the rates for that year.

5.4.2 Solid Waste Rate Adjustments

In addition to the annual escalation provided in Section 5.4.1, commencing in 2009 the Company may apply for an increase in the solid waste rates, if the Company can demonstrate that the Company's operational costs have substantially increased. For the purpose of this section, operational costs shall be defined as: Motor vehicle fuel, Insurance, Company's personnel costs (salaries and benefits), equipment repair costs, landfill and processing fee tipping fees, and equipment purchases. When applying for an increase, the Company shall submit to the City, by October 30, information in support of the adjustment. Additional factors to be taken into consideration in connection with the adjustment request will include, but are not limited to:

- Overall customer satisfaction
- Satisfactory compliance with all provisions of this Agreement
- Company has complied with solid waste diversion requirements as defined and mandated by the state of California and implemented by the City of Agoura Hills.

Company shall submit any and all data requested in the format prescribed by the City Manager. The City Manager shall review the information submitted by Company and, in the City Manager's reasonable judgment, make the final determination on the appropriate amount of the adjustment, if any. A requested adjustment may not be denied in the case of changed or additional services requested by the City, additional reporting required by the City, the City's designation of a disposal site or processing facility (except as provided in subsection 3.7.4), any change in the Municipal Code affecting the Company's operations, or changes in state or local government solid waste fees and charges. Any such rate adjustment approved by the City Manager shall become effective on January 1. An adverse decision by the City Manager may be appealed to the City Council pursuant to the procedures in Section 8.1.

5.5 Notice of Rate Increase

Company shall provide all customers with advance written notice of Rate increases, in the form of a bill insert at least fifteen (15) days prior to the effective date of such increases.

5.6 Most Favored City

Company agrees that, should it provide comparable integrated waste management services in a neighboring city during the term of this Agreement, for rates lower than those charged by Company in the City, the rates charged to customers in the City of Agoura Hills shall be reduced to an amount not greater than the amount charged to customers in that neighboring city. For purposes of this Section 5.6, "neighboring city" shall mean the cities of Calabasas, Hidden Hills, and Malibu, Westlake Village, and "comparable integrated waste management services" shall mean residential service for solid waste, recyclable

materials, and green waste not less than once per calendar week, at generally similar frequencies, and using generally similar equipment and facilities.

5.7 Administrative Fees

5.7.2 Administrative Fee.

Company shall pay the City five percent (5%) of all gross receipts from collection and disposal services provided to residential accounts (the "Administrative Fee") within the City for each calendar year or portion thereof that this Agreement remains in effect. For purposes of this Section 5.7, "gross receipts" means all revenues from services provided to residential accounts pursuant to this Agreement. Such sum shall be due and payable quarterly, within thirty (30) days after the end of each March, June, September and December of each year commencing on the Operative Date of this Agreement. Once each calendar year, the City may change the amount of the Administrative Fee upon thirty (30) day's written notice to the Company. In the event this Agreement is terminated, the balance due shall be paid within thirty (30) days after the date service are terminated. Commencing November 30, 2007, and each November 30 thereafter, Company shall deliver to City its estimate of Company's gross receipts from residential accounts for the next calendar year, so that City may budget for the amount of the Administrative Fee the City can anticipate receiving during the next calendar year.

5.7.2 Quarterly Remittance Statement.

Company shall prepare and provide to City a quarterly remittance statement by the 30th day following the end of each March, June, September and December of each year commencing on the Operative Date of this Agreement. The quarterly remittance statement shall be accompanied by the full amount of the Administrative Fee due for the preceding calendar quarter. The quarterly remittance statement shall be in the form determined by the City Manager, and shall set forth the basis and calculations used for computing the amount due, in the following format:

- Gross Receipts received by Company from residential accounts for the current billing period (including number of accounts in each rate class, and total number for each type of special charge)
- Net Revenues for the previous period from the sale of Recyclables pursuant to this Agreement, including receipt of California Redemption Values from Recyclables generated in the City
- Proceeds from any State reimbursement for operation of a curbside recycling program in the City
- Revenue collected during the previous service period from Collection of Construction and Demolition Waste
- Five percent (5%) = Administrative Fee

5.7.3 Disputes Regarding Remittances

No acceptance of any payment by City shall be construed as an accord that the amount is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim City may have against Company for any additional sums payable under the provisions of this Agreement. All amounts paid shall be subject to independent audit and recomputation by City. If, after audit, such recomputation indicates an Administrative Fee underpayment, Company shall pay to City the amount of the underpayment within ten days of receipt of written notice from City that such is the case. In addition, Company shall pay interest on any underpayment at the highest rate allowed by law. Such interest shall commence accruing on the date the underpayment would have originally been due. Further, if, after audit, such recomputation indicates an Administrative Fee underpayment of more than two and one half percent (2.5%), Company shall reimburse City for all reasonable costs and expenses incurred in connection with the audit and recomputation, within ten days of receipt of written notice from City that such is the case. If, after audit, such recomputation indicates an Administrative Fee overpayment, City shall notify Company in writing of the amount of the overpayment, less costs and expenses incurred in connection with the audit and recomputation. Company may offset the payment or payments (as appropriate) next due following receipt of such notice by the amount specified therein. In case of dispute between City and Company regarding any amounts due, Company shall pay the amount claimed by City as due and notify City in writing at the time of payment as to any portion that is paid under protest, specifying the basis of its claim of overpayment.

ARTICLE 6
RECORDS, REPORTS AND INFORMATION REQUIREMENTS;
PERFORMANCE REVIEW

6.1 General

The Company must maintain such accounting, statistical, and other records related to its performance under this Agreement as may be necessary to develop the financial statements and other reports required by this Agreement. The Company shall also conduct data collection, information and record keeping, and reporting activities necessary to comply with applicable laws and regulations and to meet the reporting and solid waste program management needs of the City, in particular the reporting obligations imposed by the Act. In this regard, the requirements set out in this and other articles of this Agreement shall not be considered limiting or necessarily complete. This article is intended only to highlight the general nature of records and reports and does not define precisely what records and reports are to be submitted, or their content. Upon the written direction of the City, the records and reports to be maintained and provided by the Company in accordance with this and other articles of this Agreement must be adjusted in number, format, or frequency.

6.2 Records

6.2.1 General

- A. The Company must maintain records required to conduct its operations, to support requests it may make to the City, and to respond to requests from the City regarding the performance of the Company's obligations under this Agreement. Adequate security must be maintained to protect records from events that can reasonably be anticipated, such as a fire, theft or earthquake. Electronically-maintained data and records must be protected and backed up. All records shall be maintained for seven years, and the last seven years of records must be maintained for an additional seven years after the expiration of this Agreement.
- B. The records of the Company shall be made available to the City and its official representatives during normal business hours. The City may review or use any of the records described in this article for the purposes set forth in Section 6.5.

6.2.2 Solid Waste Service Records

Records relating to the following matters must be maintained by the Company for a period of two (2) years:

- A. Customer services name and addresses.
- B. Routes.
- C. Facilities, equipment and personnel.
- D. Log of Complaints and actions taken to remedy various issues.
- E. Missed pick ups.

- F. Damage to public and/or private property in connection with performed services
- G. Number of Solid Waste, recycling, and green waste containers.
- H. Tons collected, processed, diverted, and disposed of by type of service, waste stream, and customer.
- I. Weight of each category of recyclable material recovered at a MRF.
- J. Payroll records.
- K. Other records as directed by the City prior to the expiration of this Agreement.

6.2.3 Disposal Records

The Company must maintain records of the disposal of all solid waste and Recyclable Materials collected in the City during the term of this Agreement, including all extensions. If the Company ceases to provide solid waste and recycling services to the City, the Company must submit to the City Manager all records of the disposal or processing of solid waste collected in the City within 30 days after discontinuing service. These records must be in a chronological and organized form and capable of being readily interpreted.

6.2.4 Other Program Records

Records for other solid waste programs and services will be tailored to specific needs. In general, they will include:

- A. Plans, tasks, and milestones; and
- B. Accomplishments, such as activities conducted, quantities of products used, produced or distributed, and numbers of participants and responses.

6.3 Reports

6.3.1 Report Formats and Schedule

- A. Records must be maintained in a format that facilitates the use of data contained in them to structure reports, as needed, that can be used, among other things, to:
 1. Evaluate the efficiency of operations.
 2. Evaluate past and current progress towards achieving the Act goals and objectives.
 3. Determine the needs for adjustments to solid waste programs.
 4. Evaluate customer service and complaints.
- B. City designees will provide sample report formats, but the Company may propose report formats that are responsive to the objectives of each report. The format of each report requires approval by the City. The Company shall submit all reports on computer discs or by electronic means in a format that is compatible with the City's software and computers at no additional charge, if requested by the City. When requested by the City, an authorized Company official shall certify, under penalty of perjury, that the report being submitted is true and correct.

- C. Quarterly reports must be submitted within 30 calendar days after the end of a calendar quarter (March, June, September and December). If requested, the Company's complaint summary, described in Section 8.3.2 (G), shall be sent to the City Manager within five days of request. Annual reports must be submitted on or before July 31 following the reporting year.

All reports will be submitted to:

City Manager (or designated representative)
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301

6.3.2 Quarterly Reports

The following information is the minimum required to be reported quarterly:

- A. Tons of solid waste collected by the Company for the previous quarter, sorted by type of service (solid waste, recycling, green waste, rolloff) and type of residential account, and itemized by percentage in the total tonnage collected, and the facilities where the tonnage was processed or disposed.
- B. Number of residential accounts billed by the Company, including the number of residential accounts participating in the recycling program.
- C. Number of multi-family residential accounts billed by the Company, including the number of multi-family residential accounts participating in the recycling program
- D. Materials recovered. Statement showing kinds of recyclable materials collected and the quantity sold (in tons).
- E. Number of missed collections reported to Company
- F. Narrative summary of problems encountered (including scavenging) and actions taken with recommendations to the City, as appropriate.
- G. Copies of promotional and public education materials sent during the preceding quarter.
- H. Copies of hazardous waste diversion records showing types and quantities, if any, of hazardous waste that was inadvertently collected, but diverted from landfilling.
- I. Complaint summary for the quarter, on a computer disc, identifying the nature of complaints.
- J. Other information or reports that the City may reasonably request.

6.3.3 Annual Report

The annual report shall essentially combine the information contained in the quarterly reports, and shall also include:

- A. A complete inventory of equipment used to provide all services (such as vehicles, containers by size, and the waste stream from each type of container).
- B. A list of all residential accounts billed by the Company, including service address, billing address, and service levels, i.e., number of carts in service by type of service (solid waste, recycling, green waste), size (32, 65, or 95-gallon) and additional cart charges; and for bins and rolloff service -- number and size of containers, type and frequency of service.
- C. Disposal records required under Section 6.2.3.
- D. General information about the Company, including a list of officers and directors, the most recent annual report and other periodic public financial reports of the Company, its subsidiaries and affiliated companies, that may perform services under this Agreement.

6.4 Adverse Information

- A. **Reporting Adverse Information.** The Company must provide to the City two copies of all reports, pleadings, applications, notifications, notices of violation, or other communications that materially and adversely affect the Company's performance of services under this Agreement, that are submitted by the Company to, or received by the Company from, the United States or California Environmental Protection Agency, the California Integrated Waste Management Board, the Securities and Exchange Commission, or any other federal, state or local agency, including any federal or state court. Copies must be submitted to the City simultaneously with the Company's filing or submission of such matters to those agencies. The Company's routine correspondence to those agencies need not be submitted to the City, but must be made available to the City promptly upon the City's written request.
- B. **Failure to Report.** The refusal or failure of the Company to file any required reports, or to provide required information, or the inclusion of any materially false or misleading statement or representation by the Company in any required report, will be deemed a material breach of this Agreement, as described in Section 11, and will subject the Company to all remedies that are available to the City.

6.5 Right to Inspect Records

The City has the right to inspect or review specific documents or records that are required under this Agreement, and that the City, in its reasonable discretion, deems necessary to evaluate annual reports, compensation adjustment applications, and the Company's performance.

6.6 Periodic Review

The City will periodically review the Company's performance based on subscriber complaints, timely payment of sums due, statistical reporting, program progress, etc. This review will be conveyed to the City Council, and the Company may review the report and submit its own statement.

6.7 Performance Review

- A. The City, at its sole discretion, may require up to three times during the term of this Agreement, a Performance Review subject to the terms and conditions of this Section 6.6. A qualified firm under contract to City shall perform the Performance Review. The City, in its the sole discretion, shall select the qualified firm to conduct the Performance Review.
- B. The costs of the Performance Review shall be equally shared by Company and City, except that Company shall not be obligated to pay more than \$2,500.00 for any one Performance Review. Notwithstanding the preceding sentence, if the Performance Review finds a material breach or default in Company's performance, Company shall in a timely manner reimburse City the total cost of the Performance Review within ten (10) days of written demand from City.
- C. The Performance Review shall address all appropriate areas, including, but not limited to, the following areas, and shall provide specific recommendations, as appropriate, for improvement in each area:
 - (i) Compliance with the terms of this Agreement and Applicable Law.
 - (ii) Overall organizational structure and management systems and procedures.
 - (iii) Efficiency of collection operations, including an analysis of routes, schedules and the impact to Agreement requirements.
 - (iv) Staffing practices, including the deployment of management and supervisory personnel.
 - (v) Financial management practices, including Company's billing and collection system and its policies with regard to uncollected accounts.
 - (vi) Personnel management practices, including compensation policies and the resolution of employee grievances.
 - (vii) Employee job and safety training, and management of Hazardous Waste.
 - (viii) Procedures for receiving and resolving subscriber complaints and concerns.
 - (ix) Procedures for the acquisition, maintenance, safety check, and replacement of equipment.
 - (x) Utilization and management of facilities, equipment and personnel.
- D. The Company shall cooperate fully with the Performance Review, and provide within thirty (30) days of request, all operational, financial and

other information deemed reasonable or convenient by City or the firm for purposes of conducting the Performance Review. The Company's failure to cooperate or provide all requested information shall be considered an event of Default.

- E. In conjunction with any Performance Review, City reserves the right to require changes to Company's operations, which City determines to be necessary or appropriate by reason of the findings or results of the Performance Review to carry out the intent of the terms and conditions of this Agreement.

ARTICLE 7 INDEMNIFICATION, INSURANCE AND BONDS

7.1 Indemnification

- A. The Company shall indemnify and hold harmless the City, its elected and appointed boards, commissions, officers, employees, and agents (collectively, "Indemnitees"), from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of every kind and description (including, but not limited to, injury to and death of any person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (a) the negligence or willful misconduct of the Company, its officers, employees, agents, subsidiaries or subcontractors in performing services under this Agreement; (b) the failure of the Company, its officers, employees, agents, subsidiaries or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the environmental laws), ordinances and regulations, or applicable permits and licenses; or (c) the acts of the Company, its officers, employees, agents, subsidiaries or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the environmental laws). The foregoing indemnity applies regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but does not extend to matters resulting from the Indemnitees' sole or active negligence, willful misconduct, or breach of this Agreement. The Company further agrees to and will, upon demand of the City, at the Company's sole cost and expense, defend (with attorneys acceptable to the City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the events referenced above.
- B. The Company, upon demand of the City, made by and through the City Attorney, shall protect the City and appear and defend the Indemnitees in any claims or actions by third parties, whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "solid waste" or "recyclable material," or the limits of the City's authority with respect to the grant of licenses or agreements, exclusive or otherwise, asserting rights under the Dormant Commerce Clause or federal or state laws to provide solid waste services in the City. This provision shall survive the expiration of the term during which collection services are to be provided under this Agreement. The City and the Company will confer following any trial to decide jointly whether to appeal or to oppose any appeal. If the City and the Company jointly agree to appeal, or to oppose any appeal, the City and the Company will share equally the costs of appeal. Should either the City or the Company decide to appeal, or to oppose an appeal, and the other decide not to appeal, or

to oppose an appeal, the party that decides to appeal, or to oppose an appeal, will bear all fees and costs of the appeal or the opposition to the appeal. The foregoing obligations will not apply to the extent of the City's sole or active negligence, willful misconduct, breach of this Agreement, or violation of law.

- C. The Company's duty to indemnify and defend against the above-referenced events arising during the term of this Agreement, and as it may be extended, shall survive the expiration or earlier termination of this Agreement.

7.2 Hazardous Substances Indemnification

The Company must defend with counsel reasonably acceptable to the City, indemnify, protect, and hold harmless the Indemnitees from and against all claims, damages (including but not limited to special, consequential, natural resources and punitive damages), injuries, costs, (including without limitation all response, remediation and removal costs), losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, attorneys' fees for the adverse party and expenses (including without limitation attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity), (collectively, "Damages") of any kind whatsoever paid, incurred or suffered by, or asserted against, the Indemnitees arising from or attributable to the acts or omissions of the Company, its officers, directors, employees, subsidiaries or agents, whether or not negligent or otherwise culpable, in connection with or related to the performance of this Agreement, including without limit Damages arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous substance, hazardous waste, household hazardous waste, solid waste, or other waste that has been generated, collected, stored, transported, or disposed of in the City. The foregoing indemnity is intended to operate as an agreement pursuant to §107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, CERCLA, 42 USC. §9607(e), Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§6901 *et seq.*, and California Health and Safety Code §25364, to defend, protect, hold harmless, and indemnify the Indemnitees from liability. This provision is in addition to all other provisions in this Agreement and will survive the end of the term of this Agreement. The liability of the Company under this Section 9.2 is **not** limited to the limits of the policies of insurance provided for under Section 9.4. The foregoing obligations will not apply with respect to any facility designated by the City under Section 3.6, except for facilities owned and operated by the Company or its affiliate.

7.3 Reduction of CERCLA and Other Liabilities

City and Company agree to meet annually in the fourth quarter of each calendar year to discuss ways to reduce potential CERCLA and other liabilities to third parties.

7.4 Indemnification for Failure to Meet Diversion Requirements

Subject to the requirements of Public Resources Code Section 40059.1, which shall control in the event of any conflict with the provisions of this section, the Company shall indemnify and hold harmless the City from and against all fines and penalties imposed by the California Integrated Waste Management Board if the source reduction and recycling goals, or any other requirements of the Act or similar legislative reenactments, are not met by the City. In the event the California Integrated Waste Management Board provides an administrative process to challenge the imposition of a compliance order or a fine or fines, the Company shall be responsible for engaging consultants and/or attorneys to represent the City in any challenge. The Company shall also be responsible for the retention of and payment to any consultants engaged to perform waste generation studies (diversion and disposal). All consultants and/or attorneys engaged hereunder are subject to the mutual agreement of the City and Company.

The Company's indemnification of the City is subject to all of the following restrictions:

- A. The Company's obligation to indemnify the City shall not be enforceable if the Board-imposed penalty is based solely upon the failure of the City to establish and maintain a source reduction and recycling element pursuant to Sections 41000 *et seq.* of the Public Resources Code.
- B. No payment required under the Company's obligation to indemnify the City may exceed that portion of any penalty assessed by the Board against the City that was attributable to the Company's breach of or noncompliance with an express obligation or requirement. Further, the Company shall not be liable under the indemnity obligation to the extent that the Company's breach or noncompliance resulted from the City's action or failure to act, determined as a result of judicial review, hearing or appeal to the California Integrated Waste Management Board.

7.5 Insurance

The Company must maintain in force for the term of this Agreement the policies of insurance specified in this Section. The City does not waive any rights against the Company that it may have under the above-referenced hold harmless agreements because of acceptance by the City, or the deposit with the City by the Company, of the insurance policies described below in this section.

- A. **Minimum Scope of Insurance.** Coverage must be at least as broad as:
 - 1. The most recent editions of Insurance Services Office Commercial General Liability coverage ("Occurrence" form CG 0001).
 - 2. The most recent editions of Insurance Services Office form number CA 0001 covering Automobile Liability, Code 1 "any auto," and endorsement CA 0025.
 - 3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

- B. **Minimum Limits of Insurance.** The Company must maintain in force for the term of this Agreement limits **no less than**:
1. General Liability: Two Million Dollars (\$2,000,000) limit per occurrence, for bodily injury, personal injury, and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit will apply separately to this project location or the general aggregate limit will be twice the required occurrence limit.
 2. Automobile Liability: Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage.
 3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California, and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.
- C. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, the Company may either: (1) cause the insurer to reduce or eliminate such deductibles or self-insured retentions as respects the Indemnitees; or (2) the Company shall procure a bond, in an amount not to exceed \$250,000, guaranteeing payment of all losses and expenses of related investigations, claims administration, and defense in the amount of those deductibles or self-insured retentions.
- D. **Other Insurance Provisions.** The policies must contain, or be endorsed to contain, the following provisions:
1. General Liability and Automobile Liability Coverages.
 - (a) The City and its officers and employees are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Company; products and completed operations of the Company; premises owned, leased or used by the Company; and vehicles owned, leased, hired or borrowed by the Company. The coverage must contain no limitations on the scope of protection afforded to the City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.
 - (b) The Company's insurance coverage must be primary insurance with respect to the Indemnitees. Any insurance or self-insurance maintained by the City, its officials, elective and appointive boards, commissions, employees, agents or volunteers will be excess of the Company's insurance and will not contribute with it.
 - (c) Any failure to comply with reporting provisions of the policies will not affect coverage provided to the Indemnitees.

- (d) Coverage must state that the Company's insurance will apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - 2. Workers' Compensation and Employers Liability Coverage. The insurer must agree to waive all rights of subrogation against the Indemnitees for losses arising from work performed by the Company for the City.
 - 3. All Coverages. Each insurance policy required by this section must be endorsed to state that coverage will not be suspended, voided, canceled by either party, or reduced in coverage or in limits except after 30 days' prior written notice by certified mail, return receipt requested, has been given to the City.
- E. **Acceptability of Insurers.** The insurance policies required by this section must be issued by an insurance company or companies authorized to do business in the State of California and with a rating in the most recent edition of Best's Insurance Guide of category VII or larger, and a rating classification of A- or better.
- F. **Verification of Coverage.** The Company must furnish the City with certificates of insurance and with original endorsements effecting coverage required by this section. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to the City and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies at the Company's local business office, upon prior written notice to the Company. Renewal certificates will be furnished periodically to the City to demonstrate maintenance of the required coverage throughout the term.
- G. **Companies and Subcontractors.** The Company must include all other companies and subcontractors performing activities in the City as insureds under its policies or furnish separate certificates and endorsements for each other company and subcontractor. All coverages for companies and subcontractors will be subject to all of the requirements stated in this section.
- H. **Required Endorsements**
- 1. The Workers' Compensation policy must contain an endorsement in substantially the following form:
"Thirty days prior written notice by certified mail, return receipt requested, will be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice shall be sent to:

City Manager
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301

2. The General Liability policy must contain endorsements in substantially the following form:
 - (a) “Thirty days prior written notice will be given to the City in the event of cancellation, reduction in coverage, or non-renewal of this policy. Such notice will be sent to:

City Manager
City of Agoura Hills
30001 Ladyface Court
Agoura Hills, California 91301
 - (b) “The City, its officers, elective and appointive boards, commissions, employees, and agents are additional insureds on this policy.”
 - (c) “This policy will be considered primary insurance as respects any other valid and collectible insurance maintained by the City, including any self-insured retention or program of self-insurance, and any other such insurance will be considered excess insurance only.”
 - (d) “Inclusion of the City as an insured will not affect the City’s rights as respects any claim, demand, suit or judgment brought or recovered against the Company. This policy will protect the Company and the City in the same manner as though a separate policy had been issued to each, but this will not operate to increase the Company’s liability as set forth in the policy beyond the amount shown or to which the Company would have been liable if only one party had been named as an insured.”

I. Other Insurance Requirements

1. The Company must comply with all requirements of the insurers issuing policies. The carrying of insurance will not relieve the Company from any obligation under this Agreement. If any claim exceeding the amount of any deductibles or self-insured reserves is made by any third party against the Company, or any company or subcontractor, on account of any occurrence related to this Agreement, the Company must promptly report the facts in writing to the insurance carrier and to the City.
2. If the Company fails to procure and maintain any insurance required by this Agreement, the City may take out and maintain, at the Company’s expense, such insurance as it may deem proper and deduct its cost from any moneys due the Company.

7.6 Faithful Performance Bond

- A. Within 15 days after the Operative Date, the Company must provide to the City a faithful performance bond (“Performance Bond”) in the amount of Two Hundred Thousand Fifty Dollars (\$250,000) for the protection of the City. The Performance Bond must be on terms acceptable to the City Manager and the City Attorney and in substantially the form attached as Exhibit 3 to this Agreement. The Performance Bond shall serve as security for the faithful performance by Company of all of its obligations under this Agreement.
- B. Upon Company’s failure to pay the City any amount owing under this Agreement, the Performance Bond may be assessed by the City for purposes including, but not limited to:
 - 1. Reimbursement of costs borne by the City to correct violations of the Agreement not corrected by Company, after City provides notice in accordance with Section 9.11.
 - 2. To provide monetary remedies or to satisfy damages assessed against the Company due to a material breach of this Agreement.
 - 3. To satisfy an order of the Intermediary.
- C. Company must deposit a sum of money or a replacement instrument sufficient to restore the Performance Bond to its original amount within 30 days after notice from the City that any amount has been withdrawn from the Performance Bond. Failure to restore the Performance Bond to its full amount within 30 days will constitute a material breach of contract. Company will be relieved of the foregoing requirement to replenish the Performance Bond during the pendency of an appeal from the City’s decision to draw on the Performance Bond.
- D. If the Performance Bond is drawn upon, all of City’s costs of collection and enforcement of the provisions relating to the Performance Bond called for by this section, including reasonable attorneys’ fees and costs, will be paid by Company.
- E. Any decision or order of City under this section may be appealed by Company through the dispute resolution procedures provided by Section 8 of this Agreement.

7.7 Property Damage

Any physical damage caused by the negligent or willful acts or omissions of employees of Company to public or private property must be repaired or replaced by Company at Company’s sole expense, excluding normal wear and tear.

7.8 Pavement Damage

Company is responsible for damage to City’s driving surfaces, whether paved or not paved, beyond normal wear and tear, caused by the Company’s vehicles. Company understands that performance under this Agreement may involve the operation of its collection vehicles over private roads and streets. Disputes between Company and its customers as to damage to private pavement are civil

matters, and complaints of damage received by the City will be referred to Company as a matter within the scope of Section 8.1. The Company will obtain permission to enter upon private streets within the City. The Company may provide special services to residential accounts that are adjacent to private streets, such as scout service, at the rates set forth in Exhibit 1.

ARTICLE 8

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

8.1 Administrative Remedies; Imposition of Damages; Termination

8.1.1 Notice of Deficiencies; Response; Appeal

8.1.1.1 Notice of Deficiencies; Response

If the City's designated representative ("Coordinator") determines that Company's performance is not in conformity with the provisions of this Agreement, the California Integrated Waste Management Act (including, but not limited to, requirements for diversion, source reduction and recycling as to the waste stream subject to this Agreement) or any other applicable federal, state, or local law or regulation, including but not limited to, the laws governing transfer, storage or disposal of solid and hazardous waste, the Coordinator may advise Company in writing of those deficiencies, specifying the deficiency in reasonable detail. The Coordinator, in any written notification of deficiencies, will set a reasonable time within which Company must respond. Unless the circumstances necessitate correction and response within a shorter period of time, Company must respond to the written notification of deficiencies within 30 days from its receipt of that written notice. Company may request additional time to correct deficiencies. City may approve reasonable requests for additional time.

8.1.1.2 Review by Coordinator: Notice of Appeal

- A. The Coordinator shall review any written response from Company and decide the matter. If the Coordinator's decision is adverse to Company, the Coordinator may order remedial actions to cure any deficiencies, assess the bond referred to in Section 7.6, or invoke any other remedy in accordance with this Agreement. If the Coordinator determines that there has been a material breach and that termination is the appropriate remedy, then the Coordinator may recommend to the City Council that this Agreement be terminated. The Coordinator must promptly inform Company of the Coordinator's decision. If the decision is adverse to Company, the Coordinator must inform Company, in writing, of the specific facts found and evidence relied upon, the legal basis for the Coordinator's decision, and any remedial action taken or ordered. An adverse decision by the Coordinator will be final and binding on Company unless Company files a "Notice of Appeal" with the City Clerk (with copies to the City Manager and City Attorney) within 30 days of receipt of the Coordinator's notification of the adverse decision.
- B. In any "Notice of Appeal," Company must state its factual contentions and include any relevant affidavits, documents, photographs, or videotapes that Company may choose to submit. In addition, Company must include its legal contentions, citing provisions of the Agreement or applicable law to support those contentions.

8.1.1.3 Review by City Manager: Appeal

- A. Within 30 days of receipt by the City Clerk of a "Notice of Appeal," the City Manager will decide the matter. If the City Manager's decision is adverse

to Company, the City Manager may order remedial actions to cure any deficiencies, assess the bond, provided under Section 7.6, or invoke any other remedy in accordance with this Agreement, except for termination. If the City Manager determines that there has been a material breach and that termination is the appropriate remedy, the City Manager may recommend that the City Council terminate the Agreement. In addition to the foregoing actions, the City Manager may refer the matter to the City Council for proceedings in accordance with Sections 8.1.2 and 8.1.3. The City Manager must promptly inform Company of the City Manager's decision. If the decision is adverse to Company, the City Manager must inform Company, in writing, of the specific facts found and evidence relied on, the legal basis for the City Manager's decision, and any remedial action taken or ordered.

- B. An adverse decision by the City Manager will be final and binding unless Company files a "Notice of Appeal to the City Council" with the City Clerk (and serves a copy, by mail, on the City Manager and the City Attorney) within 30 days of receipt of the decision of the City Manager. A "Notice of Appeal to the City Council" must state the factual basis and all legal contentions and must include all relevant evidence, including affidavits, documents, photographs, or videotapes that Company may choose to submit.

8.1.2 City Council Hearing

If a matter is referred by the City Manager to the City Council, or an adverse decision of the City Manager is appealed to the City Council by Company, the City Council shall set the matter for an administrative hearing and act on the matter. The City Clerk must give Company 14 days written notice of the time and place of the administrative hearing. At the hearing, the City Council shall consider the administrative record, consisting of the following:

- A. A staff report from the City Manager, summarizing the proceedings to date and outlining the City Council's options.
- B. The Coordinator's written notification of deficiencies.
- C. Company's response to the notification of deficiencies.
- D. The Coordinator's written notification to Company of adverse decision.
- E. Company's "Notice of Appeal".
- F. The City Manager's written notification to Company of adverse decision.
- G. The "Notice of Appeal to the City Council."

8.1.3 City Council Determination

Based on the administrative record, the City Council shall determine by resolution whether the decision or order of the City Manager should be upheld, including any recommended termination of the Agreement. If, based upon the administrative record, the City Council determines that the Company's performance is in breach of any term of this Agreement, or violates any provision of any applicable federal, state, or local statute or regulation, the City Council, in

the exercise of its discretion, may order Company to take remedial actions to cure the breach or impose any other remedy in accordance with this Agreement. The City Council may not terminate this Agreement unless it determines that Company is in breach of a material term of this Agreement, or a material provision of any applicable federal, state, or local statute or regulation. Company's performance under this Agreement is not excused during the period of time prior to a final determination as to whether Company's performance is in material breach of this Agreement, or during the period of time set by City for Company to discontinue all or a portion of its service under this Agreement. The decision or order of the City Council shall be final and binding unless Company files a "Notice of Appeal to a Third-Party Intermediary" with the City Clerk (and serves copies, by mail, on the City Manager and the City Attorney) within 10 business days of receipt of the decision or order of the City Council. With the exception of draws on the bond, the execution of City's remedies will be stayed until Company has exhausted its appeals under Sections 8.1 and 8.2 of this Agreement.

8.1.4 Reservation of Rights by City

- A. City reserves the right to terminate this Agreement, or to impose liquidated damages, temporary suspensions, or any other condition deemed appropriate, short of termination, in the event of any material breach of this Agreement, including, but not limited to any of the following:
1. **Fraud or Deceit or Misrepresentation.** If the Company engages in, or attempts to practice, any fraud or deceit upon the City or makes a misrepresentation to the City regarding material information.
 2. **Insolvency or Bankruptcy.** If the Company becomes insolvent, unable or unwilling to pay its debts, files a bankruptcy petition, or takes steps to liquidate its assets.
 3. **Failure to Maintain Coverage.** If the Company fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage required by this Agreement.
 4. **Violation of Regulations.** If the Company violates any orders of any regulatory body having jurisdiction over the Company or City that have a material impact on the Company's performance under this Agreement; provided that the Company may contest any such orders by appropriate proceedings conducted in good faith, in which case no breach of this Agreement will be deemed to have occurred until a final decision adverse to the Company is entered.
 5. **Failure to Perform.** If the Company ceases to provide collection, processing, or recycling services as required under this Agreement over all or a substantial portion of its franchise area for a period of two consecutive days or more, for any reason within the control of the Company, including labor disputes.

6. **Failure to Pay.** If the Company fails to make any payments required under this Agreement or refuses to provide to the City, within 10 days of the demand, required information, reports, or records in a timely manner.
 7. **Acts or Omissions.** Any other act or omission by the Company that has a material effect on the Company's performance under this Agreement, that violates its terms, conditions, or requirements, the California Integrated Waste Management Act of 1989, any environmental law as it may be amended from time to time, or any law, statute, ordinance, order, directive, rule, or regulation issued thereunder and which is not corrected or remedied within the time specified in the written notice of the violation or, if the Company cannot reasonably correct or remedy the breach within the time set forth in such notice, if the Company fails to commence to correct or remedy such violation within the time specified in such notice and to thereafter diligently effect such correction or remedy.
 8. **False or Misleading Statements.** Any representation or disclosure made to the City by the Company in connection with or as an inducement to entering into this Agreement, or any future amendment to this Agreement, that proves to be false or misleading in any material respect as of the time such representation or disclosure is made.
 9. **Attachment.** There is a seizure of, attachment of, or levy on, the operating equipment of the Company, including without limitation its equipment, maintenance or office facilities, or any part thereof.
 10. **Failure to Provide Assurance of Performance.** If the Company fails to provide reasonable assurances of performance as required under Section 8.4.
 11. **Felonious Conduct.** If the Company, or any of its officers or directors, is found guilty of felonious conduct related to the performance of this Agreement, or of felonious conduct related to anti-trust activities, illegal transport or disposal of hazardous or toxic materials, or bribery of public officials related to the performance of this Agreement.
- B. Upon a material breach by the Company under this subsection 8.1.4, the City has the right to terminate this Agreement upon 10 days notice if the public health or safety is threatened, or otherwise upon 30 days notice and opportunity to cure, but without the need for any hearing, suit or legal action.

8.1.5 Cumulative Rights.

- A. The City's rights to terminate this Agreement are not exclusive, and the City's termination of this Agreement shall not constitute an election of remedies. These rights are in addition to all other legal and equitable rights and remedies that the City may have.

- B. Because of the necessity for timely, continuous and high- quality service, the time required to effect alternative service, and the exclusive rights granted by the City to the Company, the remedy of monetary damages for a material breach of this Agreement by the Company is inadequate, and the City may be entitled to obtain injunctive relief.

8.2 Liquidated Damages

- A. **General.** The parties agree that, as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages that would be incurred by the City as a result of a breach by the Company of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (a) substantial damage results to members of the public who are denied service or are denied quality or reliable service; (b) such breaches cause inconvenience, anxiety, frustration, and deprivation of the benefits of the Agreement to individual members of the general public for whose benefit this Agreement exists, in subjective ways and in varying degrees of intensity that are incapable of measurement in precise monetary terms; (c) the services provided under this Agreement might be available at substantially lower costs than alternative service, and the monetary loss resulting from denial of service or from denial of quality or reliable service is impossible to calculate in precise monetary terms; and (d) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies that make the public whole for past breaches.
- B. **Service Performance Standards; Liquidated Damages for Failure to Meet Standards.** The parties further acknowledge that consistent, reliable solid waste collection service is of utmost importance to the City and that the City has considered and relied on the Company's representations as to its quality of service commitment in awarding the franchise. The parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The parties further recognize that if the Company fails to achieve the performance standards, or fails to submit required documents in a timely manner, the City and its residents will suffer damages and that it will be impractical and extremely difficult to determine the exact amount of damages that the City will suffer. Therefore, without prejudice to the City's right to treat such non-performance as an event of default under this Article 8, the parties agree that the following liquidated damage amounts represent a reasonable estimate of the amount of such damages considering all of the circumstances existing on the date of this Agreement, including the relationship of the sums to the range of harm to the City that reasonably could be anticipated, and the anticipation that proof of actual damages would be costly or impractical. In placing their initials at the places provided, each party specifically confirms the accuracy of the statements

made above and the fact that each party has had ample opportunity to consult with legal counsel and to obtain an explanation of these liquidated damage provisions prior to the execution of this Agreement.

Company _____ City _____
Initial Here _____ Initial Here _____

The Company agrees to pay as liquidated damages, and not as a penalty, the amounts set forth below:

1. Collection Reliability

- (a) For each failure to commence service to a new residential account within five days after order, which exceeds three such failures annually: \$250
- (b) For each failure to collect solid waste or recyclable materials, which has been properly set out for collection, from an established residential account or accounts, on the scheduled collection day and not collected within the period described in Section 3.4.1, which exceeds five such failures annually:
- (c) \$125 per occurrence per account
- (d) For each failure to collect solid waste or recyclable materials, which has been properly set out for collection, from the same residential account on two consecutive scheduled pickup days, or three scheduled pickups annually:
- (e) \$150 per occurrence per account

2. Collection Quality

- (a) For each occurrence of failure to properly return empty containers to avoid pedestrian or vehicular traffic impediments, or to place containers upright with lids secured, which exceeds 10 such occurrences annually: \$100
- (a) For each failure to clean up solid waste or recyclable materials spilled from solid waste containers (except where caused by overloading by the customer) that exceeds 10 such failures annually: \$100
- (b) For each occurrence of collecting solid waste or recyclable materials during unauthorized hours that exceeds five such occurrences annually: \$150
- (c) For each failure to clean or replace containers in accordance with Article 4 of this Agreement, which exceeds 10 such failures annually: \$100
- (d) For each failure to deliver a roll-off box or temporary bin within 48 hours of a customer's request: \$100

3. **Customer Responsiveness**

- (a) For each failure to initially respond to a customer complaint within one business day: \$100
- (b) For each failure to process customer complaints to the City as required by Article 5: \$100
- (c) For each failure to carry out responsibilities for establishing service: \$100
- (d) For each failure to remove graffiti from containers, or to replace with containers bearing no graffiti, within five business days of request from City or customers: \$100

4. **Timeliness of Submissions to the City**

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

- (a) Quarterly Reports: \$100 per day
- (b) Annual Reports: \$150 per day

5. **Accuracy of Billing**

- (a) Each invoice billing run that is not prepared in accordance with the City's approved rate schedule: \$100
- (b) Each occurrence in which a service address is "double billed" with multiple invoices sent to different billing addresses (for example, both a tenant and an off-site property owner are billed for service at the same location): \$150

6. **Implementation of Public Education Plan**

Each day past the agreed upon deadline that the Company fails to perform a task set forth in its public education plan: \$50 per day

C. **Imposition of Liquidated Damages**

- 1. The City may determine the occurrence of events giving rise to liquidated damages through the observations of its own employees or representatives or through the investigation of customer complaints.
- 2. Prior to assessing liquidated damages, the City shall give the Company notice of its intention to do so. The notice shall include a brief description of the incident or the event of non-performance. The Company may review (and make copies at its own expense) all non-confidential information in the City's possession relating to the incident or the event of non-performance. The Company may, within 10 days after receiving the notice, request a meeting with the City Manager. The Company may present evidence in writing and through testimony of its employees and others relevant to the incident or the event of non-performance. The City Manager shall provide the Company with a written explanation of the

determination on each incident or event of non-performance prior to authorizing the assessment of liquidated damages. The decision of the City Manager shall be final.

D. **Amount.** The City may assess liquidated damages for each calendar day or each event, as appropriate, that the Company is determined to be liable.

E. **Timing of Payment.** The Company must pay any liquidated damages assessed by the City within 10 days after they are assessed. If assessed damages are not paid within the 10-day period, the City may proceed against the performance bond or order the termination of the franchise granted by this Agreement, or exercise any other right or remedy available to City under this Agreement or at law or in equity, or any combination of these remedies.

8.3 Excuse from Performance

A. The parties shall be excused from performing their respective obligations under this Agreement if that performance is prevented by reason of floods, earthquakes, other natural disasters, war, civil insurrection, riots, acts of any government (including judicial action), strikes or labor unrest, and other similar catastrophic events that are beyond the control of and not the fault of the party claiming excuse from performance.

B. The party claiming excuse from performance must, within two days after that party has notice of such cause, give the other party notice of the facts constituting such cause and assert its claim to excuse under this section.

C. The interruption or discontinuance of the Company's services caused by one or more of the events listed above shall not constitute a default by the Company under this Agreement. Notwithstanding the foregoing, however, if the Company is excused from performing its obligations for any of the causes listed in this section for a period of seven days or more, the City shall nevertheless have the right, in its sole discretion, to terminate this Agreement by giving 10 days' notice

8.4 Assurance of Performance

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

ARTICLE 9 OTHER AGREEMENTS OF THE PARTIES

9.1 Relationship of Parties

The parties intend that the Company shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City, nor as a partner of or joint venture with the City. No employee or agent of the Company shall be deemed to be an employee or agent of the City. Except as expressly provided herein, the Company shall have exclusive control over the manner and means of conducting the solid waste collection services performed under this Agreement, and over all persons performing those services. The Company is solely responsible for the acts and omissions of its officers, employees, subsidiaries, subcontractors, affiliates and agents. Neither the Company nor its officers, employees, subsidiaries, subcontractors, affiliates and agents will obtain any rights to retirement benefits, workers' compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with the City.

9.2 Compliance with Law

In providing the services required under this Agreement, the Company must at all times, at its sole cost, comply with all applicable laws and regulations of the United States, the State of California, and local agencies. The City must comply with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, that are now in force and as they may be enacted or amended during the term of this Agreement.

9.3 Governing Law

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

9.4 Jurisdiction

Any lawsuits between the parties arising out of this Agreement will be brought and concluded in the courts of the State of California, which will have exclusive jurisdiction over such lawsuits. With respect to venue, the parties agree that this Agreement is made in and will be performed in Los Angeles County.

9.5 Assignment

- A. Neither party may assign its rights, nor delegate, subcontract or otherwise transfer its obligations under this Agreement, to any other person without the prior written consent of the other party. Any such assignment made without the consent of the other party is void, and the attempted assignment will constitute a material breach of this Agreement.
- B. For purposes of this section and when used in reference to the Company, "assignment" includes, but is not limited to (a) a sale, exchange or other transfer to a third party of substantially all of the Company's assets dedicated to service under this Agreement; (b) a sale, exchange, or other transfer of outstanding common stock of the Company to a third party, provided such sale, exchange or transfer may result in a change of control

of the Company; (c) any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation, or other transaction that results in a change of ownership or control of the Company; (d) any assignment by operation of law, including insolvency or bankruptcy, an assignment for the benefit of creditors, writ of attachment for an execution being levied against this Agreement, appointment of a receiver taking possession of the Company's property, or transfer occurring in the event of a probate proceeding; and (e) any combination of the foregoing (whether or not in related or contemporaneous transactions) that has the effect of a transfer or change of ownership, or change of control of the Company.

- C. The Company acknowledges that this Agreement involves rendering a vital service to residential accounts within the City, and that the City has selected the Company to perform the specified services based on (a) the Company's experience, skill and reputation for conducting its operations in a safe, effective and responsible fashion, at all times in compliance with applicable environmental laws, regulations, and the best solid waste management practices; and (b) the Company's financial resources to maintain the required equipment and to support its indemnity obligations to the City under this Agreement. The City has relied on each of these factors, among others, in choosing the Company to perform the services to be rendered under this Agreement.
- D. If the Company requests the City's consideration of and consent to an assignment, the City may deny or approve such request in its reasonable discretion. A request by the Company for consent to an assignment will require compliance with the following requirements:
 - 1. Any application for a change of ownership or a transfer will be made in a manner prescribed by the City Manager and will include any information reasonably required by the City Manager. The application must include a transfer fee, in an amount to be set by resolution of the City Council, to cover the reasonable costs of all direct and indirect administrative expenses of the City, including, without limitation, consultants and attorneys necessary to analyze the application. The applicant must pay such transfer fee prior to any authorized change of ownership or franchise transfer becoming effective. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an affiliate of the Company.
 - 2. Except for an assignment to an affiliate of the Company, the proposed assignee must furnish the City with audited financial statements of the proposed assignee's operations for the immediately preceding three operating years.
 - 3. Except for an assignment to an affiliate of the Company, the proposed assignee must furnish the City with satisfactory proof: (i)

that the proposed assignee has at least 10 years of solid waste management experience on a scale equal to or exceeding the scale of operations conducted by the Company under this Agreement; (ii) that in the last five years, the proposed assignee has not received any significant citations from any federal, state, or local agency having jurisdiction over its solid waste management operations due to any material failure to comply with state, federal or local environmental laws and that the assignee has provided the City with a complete list of such citations; (iii) that the proposed assignee has at all times conducted its operations in an environmentally safe and conscientious fashion; (iv) that the proposed assignee conducts its solid waste management practices in accordance with sound solid waste management practices in full compliance with all federal, state and local laws regulating the collection and disposal of solid waste, including hazardous substances; and (v) any other information required by the City to ensure that the proposed assignee can fulfill the terms of this Agreement in a timely, safe and effective manner.

4. Under no circumstances shall the City be obligated to consider any proposed assignment if the Company is in default at any time during the period of consideration.

9.6 Contracting or Subcontracting

The Company must not engage any subcontractors for the collection of solid waste or recyclable materials from residential accounts without the prior written consent of the City.

9.7 Binding on Assigns

The provisions of this Agreement will inure to the benefit of and be binding on the permitted assigns of the parties.

9.8 Transition to the Next Company

If the transition of services to another company occurs by reason of the expiration of the term, default, termination, or otherwise, the Company shall cooperate with the City and any subsequent solid waste enterprise to assist in an orderly transition that will include, but not be limited to, the Company providing route lists and billing information.

9.9 Parties in Interest

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

9.10 Non-Waiver Provision

The waiver by either party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either party of any moneys that

become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other party of any provision of this Agreement. Failure of either party to exercise any of the remedies set forth in this Agreement within the time periods specified will not constitute a waiver of any rights of that party with regard to an event of nonperformance, whether determined to be a breach, excused performance, or unexcused default by the other party

9.11 Notice

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

If to the City: City Manager
 City of Agoura Hills
 30001 Ladyface Court
 Agoura Hills, California 91301

If to the Company:
 Michael Smith, Market Area Manager
 Waste Management/G.I. Industries
 195 W. Los Angeles Avenue
 Simi Valley, California 93094

B. The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.
C. Notice will be deemed given on the day it is personally delivered or, if mailed, three days from the date it is deposited in the mail.

9.12 Representatives of the Parties

A. As set forth in Section 2.6 of Article 2, the administration of this Agreement by the City will be under the supervision and direction of the City Manager.
B. The Company must, by the Operative Date, designate in writing a responsible officer who will serve as the representative of the Company in all matters related to the Agreement. The Company must inform the City in writing of that designation and of any limitations upon that officer's authority to bind the Company. The City may rely upon actions taken by that designated representative as actions of the Company unless they are outside the scope of the authority delegated by the Company as communicated in writing to the City.

9.13 City Free to Negotiate with Third Parties

Notwithstanding the exclusive nature of this Agreement, the City may investigate all options for the collection, transporting, recycling, processing, and disposal of solid waste and recyclable materials at any time prior to the expiration of the term. Without limiting the generality of the foregoing, but subject to the

requirements of Section 2.8, the City may solicit proposals from the Company and from third parties for the provision of collection services, disposal services, recycling services, green waste services and processing, and any combination thereof, and may negotiate and execute agreements for those services that will take effect upon the expiration or earlier termination of this Agreement under Section 8.

9.14 Compliance with Municipal Code

The Company must comply with all applicable provisions of the Municipal Code of the City, and with all amendments to those provisions during the term of this Agreement.

9.15 Privacy

The Company must strictly observe and protect the rights of privacy of customers. Information identifying individual customers, or the contents of a customer's waste stream, must not be revealed to any person, governmental unit, or private entity unless directed by a court of law, by statute, or upon authorization of the customer. This provision shall not be construed to preclude the Company from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses that may be required by the Act. This provision does not apply to reports or records provided to City under this Agreement so long as City maintains reports or records with customer identification as confidential information in accordance with this section.

9.16 Proprietary Information; Public Records

The City acknowledges that certain records and reports of the Company are proprietary and confidential. Where required by this Agreement, the Company is obligated to permit the City to inspect its records on demand and to provide copies to the City when requested. The City will endeavor to maintain the confidentiality of all proprietary information provided by the Company. Notwithstanding the foregoing, and any documents provided by the Company to the City that are public records may be disclosed in accordance with a proper public records act request.

9.17 Guarantee of Contractor's Performance

Waste Management Holdings, Inc., a Delaware corporation that owns all of the issued and outstanding common stock of the Company, shall guarantee the Company's performance of this Agreement. The guarantee, in substantially the form attached as Exhibit 2, will be provided within 30 days after the Company's execution of this Agreement.

9.18 Attorney's Fees

In any action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party is entitled to an award of attorney's fees in the amount reasonably incurred in the prosecution or defense of that action. The term "prevailing party" means the party entitled to recover costs of suit, upon the conclusion of the matter, in accordance with the laws of the State of California.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 Entire Agreement

This Agreement, including the exhibits, constitutes the entire agreement between the parties with respect to the matters covered and, no verbal agreement or understanding with any officer, agent, or employee of the City, either before, during, or after the execution of this Agreement, will affect or modify any of the obligations herein contained, nor will any such verbal agreement or understanding entitle the Company to any additional payment under the terms of this Agreement.

10.2 Section Headings

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

10.3 References to Laws

All references in this Agreement to laws will be understood to include existing laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

10.4 Interpretation

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

10.5 Amendments

This Agreement may not be amended in any respect except by a writing signed by the parties, and, no verbal agreement or understanding with any officer, agent, or employee of the City, either before, during, or after the execution of this Agreement, will affect or modify any of the obligations herein contained, nor will any such verbal agreement or understanding entitle the Company to any additional payment under the terms of this Agreement.

10.6 Severability

If any provision of this Agreement is for any reason determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, including but not limited to a change in applicable federal, state or local law, the invalidity or unenforceability of that provision shall not affect any of the remaining provisions of this Agreement, which provisions shall be enforced as if such invalid or unenforceable provision had not been included.

10.7 Exhibits

Each of the exhibits identified in this Agreement is attached hereto and is incorporated by this reference.

10.8 Authority and Effective Date

- A. The persons signing below represent that they have the requisite authority to bind the entities on whose behalf they are signing.
- B. This Agreement shall become effective on the Effective Date.

TO EFFECTUATE THIS AGREEMENT, each of the parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below the authorized signature.

CITY OF AGOURA HILLS

ATTEST:

By: _____
DAN KUPEBERG, MAYOR

CITY CLERK

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

Waste Management/G.I. Industries
a Utah Corporation

By: _____
(Authorized Representative)

Title: _____

Date: _____

By: _____
(Authorized Representative)

Title: _____

Date: _____

**EXHIBIT 1
INITIAL MAXIMUM RATES**

[To be provided by Waste Management]

EXHIBIT 2

CORPORATE GUARANTY

THIS GUARANTY ("Guaranty") is given as of the [NO.].th day of MONTH, 2007, and is made with reference to the following facts and circumstances:

- A. G.I. Industries, Inc., a Utah corporation and USA Waste of California, Inc., a Delaware corporation, a Waste Management company ("Company") is a corporation organized under the laws of the State of Utah and the State of Delaware, all of the issued and outstanding stock of which is owned by Waste Management Holdings, Inc. ("Guarantor"), a corporation organized under the laws of the State of Utah.
- B. Company and the City of Agoura Hills ("City") have negotiated a Franchise Agreement for Integrated Residential Waste Management Services dated as of [DATE] ("Agreement"). A copy of that Agreement is attached
- C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guarantee Company's performance of the Agreement.
- D. Guarantor is providing this Guaranty to induce the City to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- 1. **Guaranty of the Agreement.** Guarantor irrevocably and unconditionally guarantees to the City the complete and timely performance by Company of each and every term of the Agreement that Company is required to perform. If Company fails to perform any term of the Agreement, Guarantor will promptly and fully perform it in the place of the Company, or cause it to be performed. Guarantor also guarantees payment to the City of any damages, costs, or expenses that might become recoverable by the City from Company due to its breach of the Agreement.
- 2. **Guarantor's Obligations Are Absolute.** The obligations of the Guarantor under this Guaranty are continuing, unconditional, and unlimited, and, with respect to any payment obligation of Company under the Agreement, constitute a guarantee of payment and not of collection, and are not conditional upon the validity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations under this Guaranty, the Guarantor will be entitled to all defenses, if any, that would be available to the Company in an action to enforce, or for damages for breach of, the Agreement (other than discharge of, or stay of proceedings to enforce, obligations under the Agreement under bankruptcy law).
- 3. **Waivers.** Guarantor has no right to terminate this Guaranty, or to be released, relieved, exonerated or discharged from its obligations under

this Guaranty for any reason including, without limitation: (a) the insolvency, bankruptcy, reorganization or cessation of existence of the Company; (b) the actual or purported rejection by a trustee in bankruptcy of the Agreement, or any limitation on any claim in bankruptcy resulting from the actual or purported termination of the Agreement; (c) any waiver with respect to any of the obligations of the Agreement guaranteed hereunder, or the impairment or suspension of any of the City's rights or remedies against the Company; or (d) any merger or consolidation of the Company with any other entity, or any sale, lease, or transfer of any or all the assets of the Company. Without limiting the generality of the foregoing, Guarantor waives the rights and benefits under California Civil Code Section 2819.

The Guarantor waives all benefits and defenses under California Civil Code Sections 2846, 2849, and 2850, including without limitation, the right to require the City to (a) proceed against Company; (b) proceed against or exhaust any security or collateral the City may now or later hold; or (c) pursue any other right or remedy for Guarantor's benefit. Guarantor agrees that the City may proceed against Guarantor for the obligations guaranteed herein without taking any action against Company, or any other guarantor or pledgor, and without proceeding against or exhausting any security or collateral the City may now or later hold. City may, in its sole discretion, exercise all rights and remedies available to it against Company, or any other guarantor or pledgor, without impairing the City's rights and remedies in enforcing this Guaranty.

The Guarantor now waives, and agrees to waive at any future time, at the request of the City and to the extent now or then permitted by applicable law, all rights that the Guarantor may now have, by statute, regulation or otherwise, to avoid any of its obligations under, or to terminate, cancel, or surrender this Guaranty. Without limiting the generality of the foregoing, it is agreed that the occurrence of any assignment of the Agreement that does not require the City's approval will not affect the liability of the Guarantor.

Guarantor expressly waives diligence, presentment, demand for payment or performance, protest and all notices whatsoever, including, but not limited to, notices of non-payment or non-performance, notices of protest, notices of any breach or default, and notices of acceptance of this Guaranty. If all or any portion of the obligations guaranteed under this Guaranty are paid or performed, Guarantor's obligations will continue and remain in full force and effect in the event that all or any part of such payment or performance is avoided or recovered directly or indirectly from the City as a preference, fraudulent transfer, or otherwise, irrespective of (a) any notice of revocation given by Guarantor or Company prior to such avoidance or recovery; and (b) payment in full of any obligations then outstanding.

4. **Term.** This Guaranty is not limited to any period of time, but will continue in full force and effect until all of the terms of the Agreement have been fully performed or otherwise discharged. Guarantor will remain fully responsible under this Guaranty without regard to the acceptance by the City of any performance bond or other collateral to assure the performance of Company's obligations under the Agreement. Guarantor will not be released from its obligations under this Guarantee so long as there is any claim by the City against Company arising out of the Agreement based on Company's failure to perform, which failure has not been settled or discharged.
5. **No Waivers.** No delay by the City in exercising any rights under this Guaranty, nor City's failure to exercise those rights, will operate as a waiver of those rights. No notice to or demand on Guarantor will be a waiver of any obligation of Guarantor, or right of the City, to take other or further action without notice or demand. No modification or waiver of any of the provisions of this Guaranty will be effective unless it is in writing and signed by the City and by Guarantor, nor will any waiver be effective except in the specific instance or matter for which it is given.
6. **Attorney's Fees.** If Guarantor breaches its obligations under this Guaranty, Guarantor will pay reasonable attorney's fees, and all other reasonable costs and expenses, that are incurred by the City in enforcing this Guaranty, or that are incurred in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties under this Guaranty.
7. **Governing Law: Jurisdiction.** This Guaranty is and will be deemed to be a contract entered into under the laws of the State of California and will be governed and construed in accordance with the laws of California without regard to its conflicts of laws rules for all purposes including, but not limited to, matters of construction, validity, and performance. Guarantor agrees that any action brought by the City to enforce this Guaranty may be brought in any court of the State of California, and Guarantor consents to personal jurisdiction over it by those courts. Guarantor appoints the following person as its agent for service of process in California:

With a copy by certified mail to:

General Counsel
Waste Management Holdings, Inc.

8. **Severability.** If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will not affect the remaining portions of this Guaranty, which portions are severable and will continue in full force and effect.
9. **Binding On Successors.** This Guaranty inures to the benefit of the City and its successors and is binding upon Guarantor and its successors, including any transferee of substantially all of Guarantor's assets, and its shareholders in the event of Guarantor's dissolution or insolvency.
10. **Authority.** Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that the execution of this Guaranty has been authorized by all necessary action under its articles of incorporation and by-laws, and that the person signing this Guaranty on its behalf has the authority to do so.
11. **Notices.** Notices must be given in writing, deposited in the U.S. mail, registered or certified, first class postage prepaid, addressed as follows:

To the City: City Manager
 City of Agoura Hills
 30001 Ladyface Court
 Agoura Hills, California 90749

with a copy to the City Attorney at the same address.

To the Guarantor: General Counsel
 Waste Management Holdings, Inc.

WASTE MANAGEMENT HOLDINGS, INC.
 [Guarantor]

By: _____
 Authorized Representative

Title: _____

Date: _____

EXHIBIT 3
FAITHFUL PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, the City of Agoura Hills, California, a municipal corporation ("City") has awarded to G.I. Industries, Inc., a Utah corporation and USA Waste of California, Inc., a Delaware corporation, a Waste Management company ("Principal"), an exclusive franchise for the collection, processing, and disposal of residential solid waste generated within the City; and

WHEREAS, the exclusive franchise, identified as "Franchise Agreement for Integrated Residential Waste Management Services" is incorporated by this reference; and

WHEREAS, the Principal is required under the terms of the exclusive franchise to furnish a bond for its faithful performance;

NOW, THEREFORE, we, Principal and _____, as Surety, are held and firmly bound unto the City in the penal sum of Two Hundred Fifty Thousand Dollars (\$250,000), lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation will become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, will in all things stand to, abide by, well and truly keep and perform the covenants, conditions, and provisions in said exclusive franchise and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and will indemnify and save harmless the City, its officers, agents, and employees, as therein stipulated; otherwise, this obligation will be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified, costs and reasonable expenses and fees will be included, including reasonable attorneys' fees, incurred by the City in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the exclusive franchise, the work to be performed thereunder, or the specifications accompanying the exclusive franchise will in any manner affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the exclusive franchise, the work, or the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the above-named Principal and Surety on _____, 2007.

Note: All signatures must be acknowledged before a notary public. Attach appropriate acknowledgment.

(Type name of Principal)

(Type address of Principal)

By: _____
(Signature of authorized officer)

(Title of officer)

(Type name of Surety)

(Type address of Surety)

By: _____
(Signature of authorized officer)

(Title of officer)

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT 4
AFFIDAVIT REGARDING PROCESS INTEGRITY
AND NONCOLLUSION

This affidavit is submitted by the undersigned and signed under penalty of perjury, in connection with the "Agreement for Integrated Residential Waste Management Services" entered into with the City of Agoura Hills ("Franchise Agreement"). The undersigned affiant, being of lawful age, states as follows:

1. That this affidavit is executed and submitted on behalf of the solid waste enterprise whose name is set forth below ("Company").
2. That in the six months prior to the execution of the Franchise Agreement, neither the Company, nor any of its agents or representatives, has paid, given, or donated, nor agreed to pay, give, or donate, any money or other things of value to any member of the Agoura Hills City Council.
3. That the Company has not, either directly or indirectly, entered into any agreement or understanding with any other solid waste enterprise relating to the provision of integrated residential waste management services in the City, controlling the rates, fees, charges or other compensation, allocating required services, or otherwise restraining or impeding competition.

Executed under penalty of perjury this _____ day of _____, 2007, at _____, California.

[Name of Company]

[Signature of Affiant]

[Type Name of Affiant]

[Title]