CITY COUNCIL & SUCCESSOR AGENCY **AGENDA**

Bob J. Archuleta, Mayor
Gustavo V. Camacho, Mayor Pro Tem
David W. Armenta, Councilmember
Gregory Salcido, Councilmember
Brent A. Tercero, Councilmember

Tuesday, April 10, 2012
Regular Meeting 6:00 p.m.
Council Chamber
6615 Passons Blvd.
Next Resolution No. 6672
Next Ordinance No. 1072
Next Agreement No. 12-1290

COMMISSIONERS SCHEDULED TO BE PRESENT:
Tommy Elisaldez, Planning Commission
Rod Torres, Parks & Recreation Commission

INVOCATION:
(In accordance with the Court's Decision in Rubin v. City of Burbank, only nonsectarian prayers/invocations are allowed during the invocation)

PLEDGE OF ALLEGIANCE:

SPECIAL PRESENTATIONS:

- Greater Los Angeles County Vector Control District – Asian Tiger Mosquito
- Proclamation for National Library Week

PLEASE TURN OFF ALL PAGERS AND/OR PHONES WHILE MEETING IS IN SESSION AND PLEASE REFRAIN FROM TEXTING DURING THE MEETING

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In compliance with the Americans with Disabilities Act of 1990, the City of Pico Rivera is committed to providing reasonable accommodations for a person with a disability. Please call the City Clerk's office at (562) 801-4389, if special accommodations are necessary and/or if information is needed in an alternative format. Special requests must be made in a reasonable amount of time in order that accommodations can be arranged.

PUBLIC HEARING(S):

1. **Public Hearing – Zoning Code Amendment No. 166 – Prohibiting Entitlements for Fast Food Establishments within the Northern Boundaries of the City.** (1300)
   a. Open Hearing
   b. Memo from City Manager
   c. Written Communications
   d. Oral Communications
   e. Close Hearing
   f. **Recommendation:**
      1. Introduce Ordinance prohibiting fast food establishments within the northern boundaries of the city on Rosemead and Beverly Boulevards; and
      2. Adopt Resolution approving Zoning Code Amendment No. 166 prohibiting fast food establishments within the northern boundaries of the city on Rosemead and Beverly Boulevards.

      Introduce Ordinance No. _____ AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, AMENDING CHAPTER 18.04 (DEFINITIONS), AMENDING NOTE 73 OF SECTION 18.40.040 (LAND USE CHART) OF THE PICO RIVERA MUNICIPAL CODE PROHIBITING FAST FOOD ESTABLISHMENTS IN DESIGNATED AREAS OF THE NORTHERN PORTION OF THE CITY (FIRST READING AND INTRODUCTION)

      Resolution No. _____ A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, APPROVING THE PROHIBITION OF FAST FOOD ESTABLISHMENTS IN AREAS OF THE NORTHERN PORTION OF THE CITY DESIGNATED HEREIN AS ZONE CODE AMENDMENT NO. 166

1st PERIOD OF PUBLIC COMMENTS - IF YOU WOULD LIKE TO SPEAK ON ANY LISTED AGENDA ITEMS, PLEASE FILL OUT A GREEN PUBLIC COMMENT REQUEST FORM AND PROVIDE IT TO THE STAFF MEMBER AT THE BACK TABLE BEFORE THE MEETING STARTS.

When you are called to speak, please come forward and state your name and city of residency for the record. You have three (3) minutes to make your remarks. In accordance with Government Code Section 54954.2, members of the City Council may only: **1)** respond briefly to statements made or questions posed by the public; **2)** ask a

question for clarification; **3)** provide a reference to staff or other resources for factual information; **4)** request staff to report to the City Council at a subsequent meeting concerning any matter raised by the public; and **5)** direct staff to place a matter of business on a future agenda. City Council members cannot comment on items that are not listed on a posted agenda.

CONSENT CALENDAR ITEMS:

All items listed on the Consent Calendar may be acted on by a single motion without separate discussion. Any motion relating to a Resolution or Ordinance shall also waive the reading of the titles in full and include its adoption as appropriate. If discussion or separate vote on any item is desired by a Councilmember or staff, that item may be pulled from the Consent Calendar for separate consideration.

2. Minutes:

- City Council and Successor Agency meeting of March 27, 2012

Recommendation: Approve

- Planning Commission meeting of March 19, 2012

Recommendation: Receive and File

3. 16th Warrant Register of the 2011-2012 Fiscal Year. (700)

Check Numbers: 251055-251126 & 251129-251252
Special Checks Numbers: 251127-251128
Recommendation: Approve

4. Replacement of Computers. (700)

Recommendation:

1. Approve the purchase of 67 replacement desktop computers from Dell USA for an amount not to exceed $70,000.

CONSENT CALENDAR ITEMS PULLED:

CITY COUNCIL LEGISLATION:

5. Integrated Solid Waste Management Services Agreement. (500)

Recommendation:

1. Authorize the Mayor to execute an Exclusive Agreement with NASA Services Inc. for the collection of residential and commercial solid waste.

   Agreement No. _____

SUCCESSOR AGENCY ACTIVITIES: None

NEW BUSINESS:

OLD BUSINESS:

2ND PERIOD OF PUBLIC COMMENTS - THIS TIME IS RESERVED FOR COMMENTS THAT HAVE NOT BEEN ADDRESSED ALREADY OR THAT ARE NOT LISTED ON THE AGENDA. PLEASE FILL OUT A BLUE PUBLIC COMMENT REQUEST FORM AND PROVIDE IT TO THE STAFF MEMBER AT THE BACK TABLE BEFORE THE MEETING STARTS.

When you are called to speak, please come forward and state your name and city of residency for the record. You have three (3) minutes to make your remarks.

CLOSED SESSION:

The City Council will recess to Closed Session to meet with its Representatives - Ron Bates, City Manager, Debbie Lopez, Assistant City Manager, and Mike Matsumoto, Director of Finance. Pursuant to Government Code Section §54957.6. Involving Union Labor Relations Organizations: SEIU Full-Time Bargaining Unit; SEIU Directors Bargaining Unit; SEIU Hourly Bargaining Unit and CEA Professional and Confidential Unit; and CEA Mid-Manager's Bargaining Unit.

ADJOURNMENT:

AFFIDAVIT OF POSTING

I, Anna M. Jerome, Assistant City Clerk, for the City of Pico Rivera, DO HEREBY CERTIFY, under penalty of perjury under the laws of the State of California, that the foregoing notice was posted at the Pico Rivera City Hall bulletin Board, Pico Rivera Post Office and Parks: Smith, Pico and Rivera and full agenda packets distributed to the Mines and Serapis Libraries, which are available for the public to view. Additionally, agenda was distributed to members of the media on this the 5th day of April, 2012.

Dated this 5th, day of April, 2012

Anna M. Jerome

Anna M. Jerome, CMC
Assistant City Clerk

SB343 NOTICE

In compliance with and pursuant to the provisions of SB343 any public writing distributed by the City Clerk to at least a majority of the City Council Members regarding any item on this regular meeting agenda will be available on the back table at the entrance of the Council Chamber at the time of the City Council meeting and at the counter of City Hall at 6615 Passons Boulevard, Pico Rivera, California during normal business hours.

CITY COUNCIL **AGENDA REPORT**

To: Mayor and City Council

From: City Manager

Meeting Date: April 10, 2012

Subject: PUBLIC HEARING – ZONING CODE AMENDMENT NO. 166 – PROHIBITING ENTITLEMENTS FOR FAST FOOD ESTABLISHMENTS WITHIN THE NORTHERN BOUNDARIES OF THE CITY.

Recommendation:

1. Introduce Ordinance prohibiting fast food establishments within the northern boundaries of the City on Rosemead and Beverly Boulevards.
2. Adopt Resolution approving Zone Code Amendment No. 166 prohibiting fast food establishments within the northern boundaries of the City on Rosemead and Beverly Boulevards.

Fiscal Impact:

None.

Background:

On May 11, 2010, the City Council approved a 45-day Fast Food Moratorium prohibiting entitlements for fast food establishments in the northern commercial portion of the City on Beverly Boulevard (east-west boundary) Rosemead Boulevard (north boundary to the Union Pacific railroad). The City Council later extended the moratorium for a maximum of two years as permitted by State law. The Fast Food Moratorium is set to expire on May 11, 2012.

The fast food moratorium was adopted based on the over proliferation of fast food restaurants when compared to sit-down restaurants, the limited variety of commercial establishments, the abundance of waste discarded due to disposable wrappers and containers and the negative health effects related to fast food. Staff noted several health

studies related to the negative health effects such as childhood obesity, cardiovascular disease, asthma, sleep apnea and type-2 diabetes.

Discussion:

On March 5, 2012 the Planning Commission initiated the Zone Code Amendment No. 166. On April 2, 2012 the Planning Commission approved to recommend approval to prohibit fast food establishments in the northern target area. The target area includes the east-west boundaries on Beverly Boulevard and Rosemead Boulevard from the northern most City boundary to north of Mines Avenue. The area of study was extended on Rosemead Boulevard from the Union Pacific railroad to the Mines Avenue. This was included because of the limited variety of commercial establishments.

A Fast Food establishment has been defined as *"Any establishment, which does not use waiters for the taking of orders from customers, utilizing table menus and serving of food to customers at designated tables. Fast Food establishments specialize in quick-service food with limited or no seating, serve food primarily in paper, plastic or other disposable containers, its principal business is the sale of breakfast, lunch and dinner meals in ready-to-consume state for off-site consumption and/or drive-thru service is provided for patrons."* Fast Food establishments do not include businesses which sell fast food as a secondary use. For instance, a Ralph's Supermarket primary use is the sale of groceries, however many supermarkets also sell fast food such as fried chicken and sandwiches in ready to eat containers. This exclusion would also include convenient stores, gasoline stations, and meat markets selling ready to eat food in disposable containers.

The Planning Commission recommends to the City Council to approve the fast food ordinance based on the following:

1) The ratio of fast food establishments out number sit-down establishments 2 to 1.
2) The northern study area lacks a variety of commercial development including grocery stores, sit-down restaurants and department stores.
3) Prohibiting fast food restaurants in the northern boundary allows the opportunity for other quality establishments at available key locations i.e. Beverly and Rosemead Boulevards.
4) In the last decade, new development has mainly focused on Washington and Whittier Boulevards.
5) The City desires to provide a variety of commercial development for the northernmost City residents which are commercially landlocked between the San Gabriel and Rio Hondo Rivers and the Whittier Narrows area.

6) High concentrations of fast food establishment without a variety of sit-down establishments or grocery stores limit the healthy choice options for the surrounding community.
7) Studies have found that fast food causes an increase of waste discarded on public streets due to disposable wrappers.

The Fast Food Ordinance will not affect any existing fast food establishments; these would be grandfathered in. However, should a fast food restaurant use be vacant for more than six months, the fast food use cannot be reinstated.

The Community and Economic Development Department is in the midst of updating the 1993 General Plan. During this process, land throughout the City will be evaluated for appropriate uses (i.e. zoning). This process will allot staff time to continue to study the fast food target area, areas throughout the City not in the target area and work with potential developers to bring in a variety of commercial developments.

Ronald Bates

RB:BM:JG:av

Attachments: Resolution
Ordinance
Map
Draft Planning Commission Minutes – April 2, 2012
Planning Commission Resolution No. 1194

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, AMENDING CHAPTER 18.04 (DEFINITIONS), AMENDING NOTE 73 OF SECTION 18.40.050(C) (LAND USE REGULATIONS) AND SECTION 18.40.040 (LAND USE CHART) OF THE PICO RIVERA MUNICIPAL CODE PROHIBITING FAST FOOD ESTABLISHMENTS IN DESIGNATED AREAS OF THE NORTHERN PORTION OF THE CITY

THE CITY COUNCIL OF THE CITY OF PICO RIVERA DOES ORDAIN AS FOLLOWS:

SECTION 1. The official Zoning Ordinance of the City of Pico Rivera is hereby amended as provided in this Ordinance pursuant to duly noticed public hearings both before the Planning Commission and City Council.

SECTION 2. Pursuant to the State of California Public Resources Code and State Guidelines for the California Environmental Quality Act (CEQA), the City Council finds that there is no possibility that the project will have a significant effect on the environment and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15061 (b)(3) of the CEQA Guidelines that states, a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3. The City Council finds that the amendment to the Zoning Code is consistent with the General Plan.

SECTION 4. The City Council further finds that the proposed amendment is consistent with the spirit and integrity of the Municipal Code as to the intent of Chapters 18.04, *Definition* and 18.40, *Land Use Regulations*.

SECTION 5. Section 18.04.368 of Chapter 18.04 of Title 18 of the Pico Rivera Municipal code, is hereby added to read as follows:

"18.04.368 Fast Food Restaurant

"Fast Food Establishment" means any food service establishment which does not use waiters for the taking of orders from customers utilizing table menus and serving food to customers at designated tables. Fast Food Establishments specialize in quick service food with limited or no seating, serve food primarily in paper, plastic or other disposable containers ,their principal business is the sale of breakfast, lunch and dinner meals in a ready-to-consume state for off-site consumption and/or they provide drive-thru service for patrons.

SECTION 6. Note 73 of Section 18.40.050 (C) of Chapter 18.40 of Title 18 of the Pico

Rivera Municipal Code is hereby added to read as follows:

*"**Note 73.** On and after the effective date of the ordinance adopting this provision fast food establishments with or without drive-thrus shall not be allowed on property zoned Professional and Administrative (P-A), Commercial/Manufacturing (C- M), Neighborhood Commercial (C-M), Community Commercial (C-C), General Commercial (C-G), Commercial Planned Development (CPD), Limited Industrial (I-L), General Industrial (I-G) or Industrial Planned Development (IPD) contiguous to Rosemead Boulevard from the northern most City boundary to the north side of Mines Avenue and contiguous to Beverly Boulevard from the east City boundary to the west City boundary. Legally existing fast food establishments shall not be affected. Should legally existing fast food establishments discontinue their legally existing use, they shall comply with the non-conforming use provisions of Chapter 18.54, Non-Conforming Uses of Title 18, Zoning of the zoning ordinance. When fast food establishments are a secondary use to a primary use within an enclosed (building), they shall not be prohibited. For example, gas stations, convenience stores, grocery stores and discount stores selling fast food shall not be affected.*

SECTION 7.

Note 73 of Section 18.40.050 (C) shall be added to Land Use Chart Table 18.40.040 as follows:

	Land Use	**Zone**					
D.	**Commercial Uses (cont'd)**	**P-A**	**C-M**	**C-N**	**C-C**	**C-G**	**CPD**
23.	Cafés and restaurants	20, 33, 55, 56, 73	20, 55, 56, 73		20, 55, 56, 73	20, 55, 56, 73	1, 55, 56, 73
35.	Drive-in and drive-thru business establishments			1, 18, 28, 73	1, 18, 28, 73	1, 18, 28, 73	1, 18, 28, 73

	Land Use	**Zone**		
E.	**Industrial Uses***	**I-L**	**I-G**	**IPD**
11.	Cafés and restaurants	20, 56, 58, 62, 73	20, 56, 62, 73	1, 20, 56, 58, 73

SECTION 8. Severability. The City Council hereby declares that it would have passed this ordinance sentence by sentence, paragraph by paragraph, and section by section and does hereby declare that the provisions of this Ordinance are severable, and if, for any reasons, any sentence, paragraph, or section of this Ordinance shall be held invalid, such decision shall not affect the validity of the remaining parts of this Ordinance.

SECTION 9. The City Clerk shall certify to the adoption of this Ordinance. The City

Council hereby finds that there are not newspapers of general circulation published and circulated within the City. The City Clerk shall therefore cause this Ordinance to be posted in five public places within the City as specified in the Pico Rivera Municipal Code within fifteen days of its final passage and this Ordinance shall take effect thirty days following its final passage.

APPROVED AND ADOPTED this ____ day of _____, 2012.

_____
Bob J. Archuleta, Mayor

ATTEST:

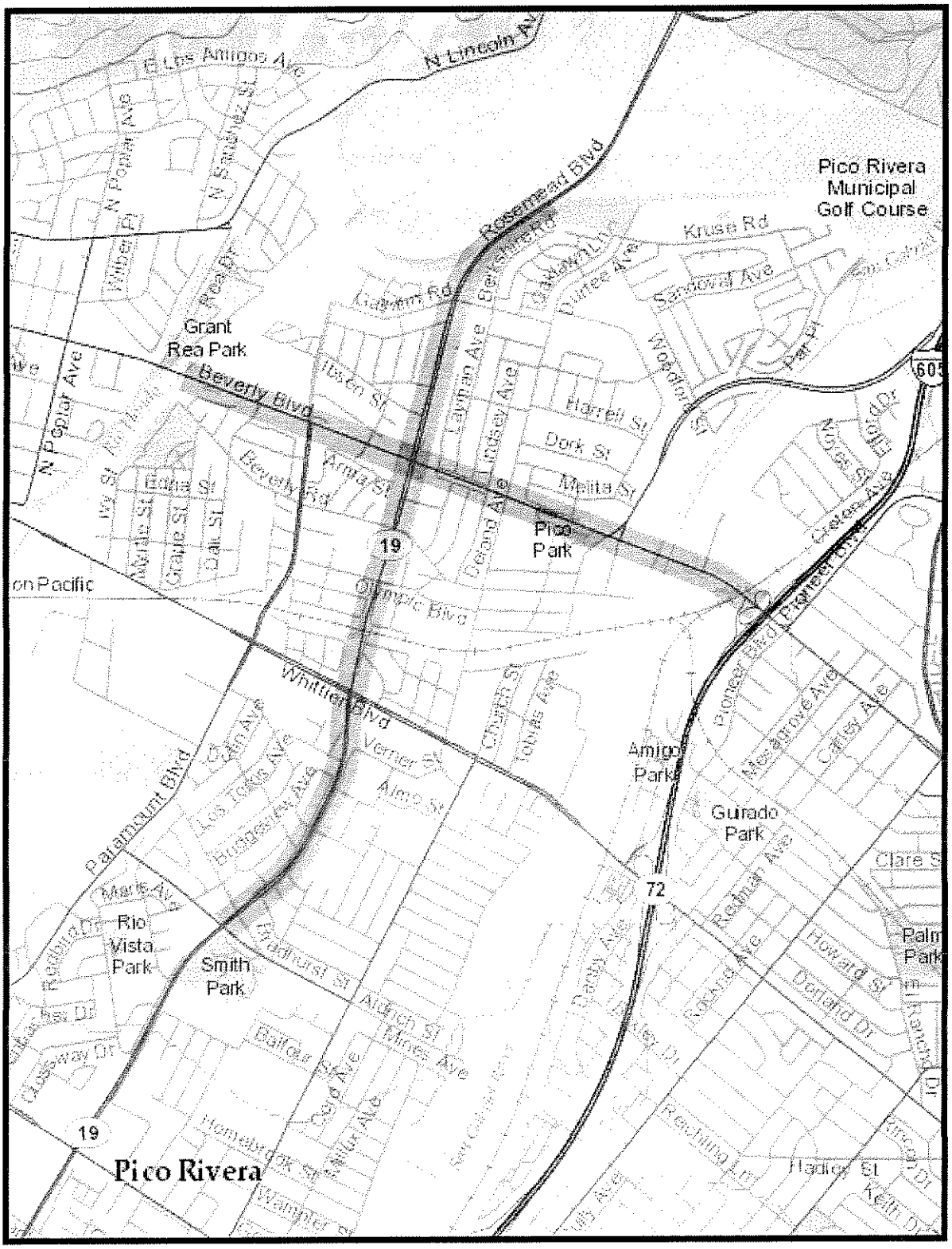
_____
Anna M. Jerome, Assistant City Clerk

APPROVED AS TO FORM:

_____
Arnold M. Alvarez-Glasman, City Attorney

AYES:
NOES:
ABSENT:
ABSTAIN:

Zone Code Amendment No. 166
Fast Food Prohibition Ordinance
Boundary Area Map



RESOLUTION NO._____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, APPROVING THE PROHIBITION OF FAST FOOD ESTABLISHMENTS IN AREAS OF THE NORTHERN PORTION OF THE CITY DESIGNATED HEREIN AS ZONE CODE AMENDMENT NO. 166

WHEREAS, the existing Zoning Code, Ordinance No. 543, was adopted on April 7, 1975; and

WHEREAS, Section 18.62.110, *Initiation Procedures* of the Pico Rivera Municipal Code authorizes the Planning Commission of City of Pico Rivera to initiate proceedings to amend the Zoning Ordinance; and

WHEREAS, the City of Pico Rivera Planning Commission initiated Zone Code Amendment No. 166 on March 5th, 2012; and

WHEREAS, the Planning Commission of the City of Pico Rivera conducted a public hearing on the matter of amendments to Chapter 18.40, *Land Use Regulations*, of the Pico Rivera Municipal Code at a legally noticed public hearing held on March 19 and April 2 2012; and

WHEREAS, the Planning Commission approved recommending to the City Council to prohibit fast food establishments in the northern portion of the City; and

WHEREAS, the City Council held a duly notice public hearing on April 10, 2012 and has carefully considered all pertinent testimony and the staff report offered regarding Zone Code Amendment No. 166.

NOW, THEREFORE, be it resolved by the City Council of the City of Pico Rivera that:

SECTION 1. The City Council has determined that there is no possibility that the project will have a significant effect on the environment and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15062 B(3) of the CEQA Guidelines that states, a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 2. Pursuant to Article II of Chapter 18.62, *Amendments and Zone Reclassification* of the Pico Rivera Municipal Code, the City Council of the City of Pico Rivera approves an Ordinance amending Title 18, *Zoning* of the Pico Rivera Municipal Code, modifying Chapter 18 as specifically described in sections 5 through 7 of the attached draft ordinance designated herein as Attachment "A" made a part hereof as set forth herein and further designated as Zone Code Amendment No. 166.

SECTION 3. Further, this Resolution with reports and findings and recommendations herein contained and the recommended Ordinance attached hereto in this matter shall constitute a report of the City Council.

SECTION 4. The City Council finds that the amendment to Title 18, *Zoning* of the Pico Rivera Municipal Code should be approved for the following reasons and findings:

a) The proposed amendment is consistent with the spirit and integrity of the 1993 General Plan page I-3, as there is need for "...department stores and a wide selection of restaurants".

b) That the proposed amendment is consistent with the General Plan Policy A.5.1 in that the prohibition of further Fast Food restaurants in the northern portion of the City is anticipated to "...encourage commercial development compatible with the level of demand which is expected, and which complements, rather than duplicates, other commercial development in the area.

c) That the proposed amendment is consistent with the intent and purpose of Chapter 18.28, General Commercial Zone, in that the intent is to provide "...a full range and wide variety of retail commercial stores and service establishments that are not dependent on marketing and trading area support solely within the corporate boundaries of the City, but also rely on consumer purchasing power outside of the established community."

d) That the proposed ordinance amendment does not outright prohibit fast food restaurants but rather limits the existing number of fast food restaurants in order to give opportunity to other quality retail establishments such as a grocer, department stores and sit-down restaurants.

e) That there are negative side effects to having an over proliferation of fast food restaurants such as the waste discarded when there is an over proliferation and health effects when choices are limited.

APPROVED AND ADOPTED this 10th day of April 2012.

[THIS SECTION LEFT BLANK INTENTIONALLY]

_____
Bob J. Archuleta, Mayor

ATTEST:

_____
Anna M. Jerome, Assistant City Clerk

APPROVED AS TO FORM:

_____
Arnold M. Alvarez-Glasman, City Attorney

AYES:
NOES:
ABSENT:
ABSTAIN:

DRAFT

PLANNING COMMISSION **MINUTES**

Monday, April 2, 2012

A regular meeting of the Planning Commission was called to order by Chairperson Zermeno at 6:00 p.m., in the City Hall Council Chambers, 6615 Passons Boulevard, Pico Rivera, CA.

STAFF PRESENT:
Julia Gonzalez, Deputy Director of Community and Economic Development
Scott Nichols, Assistant City Attorney
Alicia Villanueva, Recording Secretary

ROLL CALL:

PRESENT: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno

ABSENT: None

FLAG SALUTE: Led by Commissioner Garcia

APPROVAL OF MINUTES:

March 19, 2012

It was moved by Commissioner Celiz to approve the minutes of March 19, 2012 as submitted, seconded by Commissioner Martinez. Motion carried by the following roll call:

AYES:	Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

CONTINUED PUBLIC HEARING – ZONE CODE AMENDMENT NO. 166 – PROHIBITING ENTITLEMENTS FOR FAST FOOD AND/OR DRIVE-THROUGH ESTABLISHMENTS WITHIN THE SPECIFIED AREA

Deputy Director Julia Gonzalez presented a staff report dated April 2, 2012, along with a visual presentation. She summarized the proposal that was discussed at the last Planning Commission meeting of March 19, regarding prohibiting fast food establishments on the northern portion of the city. She stated fast food is defined as: any restaurant, which does

not use waiters for the taking of orders from customers utilizing table menus and serving of food to customers at designated tables. Fast Food Restaurants specialize in quick service food with limited or no seating, serve food primarily in paper, plastic or other disposable containers, its principal business is the sale of breakfast, lunch and dinner meals in a ready-to-consume state for off-site consumption and/or drive-thru service is provided for patrons.

Ms. Gonzalez, commented on the ratio of sit-down restaurants to fast food establishments in the northern portion of the City, the study found that sixteen establishments are fast food and seven establishments are sit-down restaurants. In conclusion, she stated that the moratorium will expire May 11, 2012, and staff needs to protect the northern portion of the city to bring more development such as sit-down restaurants and grocery stores or other quality establishments.

Commissioner Elisaldez motioned to close the public hearing, second by Commissioner Martinez. Motion carried by the following roll call:

AYES:	Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

There being no further discussion, Commissioner Celiz moved to recommend approval to the City Council to prohibit fast-food restaurants in the northern City boundaries on Rosemead between the northern City limit and Mines Avenue and Beverly Boulevard on the east-west City boundary, seconded by Commissioner Martinez. Motion carried by the following roll call:

AYES:	Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

PUBLIC COMMENTS: None.

PLANNING COMMISSION REPORTS:

a) City Council Meeting of March 27, 2012 – Received and Filed.
b) City Council Meeting of April 10, 2012 – Commissioner Elisaldez confirmed.

RESOLUTION NO. 1194

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PICO RIVERA, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL TO PROHIBIT FAST FOOD RESTAURANTS IN DESIGNATED AREAS OF THE NORTHERN PORTION OF THE CITY DESIGNATED HEREIN AS ZONE CODE AMENDMENT NO. 166

WHEREAS, the existing Zoning Code, Ordinance No. 543, was adopted on April 7, 1975; and

WHEREAS, Section 18.62.110, *Initiation Procedures* of the Pico Rivera Municipal Code authorizes the Planning Commission of City of Pico Rivera to initiate proceedings to amend the Zoning Ordinance; and

WHEREAS, the City of Pico Rivera Planning Commission initiated Zone Code Amendment No. 166 on March 5th, 2012; and

WHEREAS, the Planning Commission of the City of Pico Rivera conducted a public hearing on the matter of amendments to Chapter 18.40, *Land Use Regulations*, of the Pico Rivera Municipal Code at a legally noticed public hearing held on March 19, 2012; and

WHEREAS, the Planning Commission has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing of March 19, 2012 and continued public hearing of April 2, 2012; and

NOW, THEREFORE, be it resolved by the City Council of the City of Pico Rivera that:

SECTION 1. The Planning Commission recommends to the City Council that there is no possibility that the project will have a significant effect on the environment and as a result, no further CEQA review is necessary. This determination is in accordance with Section 15062 B(3) of the CEQA Guidelines that states, a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 2. Pursuant to Article II of Chapter 18.62, *Amendments and Zone Reclassification* of the Pico Rivera Municipal Code, the Planning Commission recommends to the City Council of the City of Pico Rivera approval of an Ordinance amending Title 18, *Zoning* of the Pico Rivera Municipal Code, modifying Chapter 18 as specifically described in sections 5 through 7 of the attached draft ordinance designated herein as Attachment "A" made a part hereof as set forth herein and further designated as Zone Code Amendment No. 166.

SECTION 3. Further, this Resolution with reports and findings and recommendations herein contained and the recommended Ordinance attached hereto in this matter shall constitute a report of the City Council.

SECTION 4. The Planning Commission finds that the amendment to Title 18, *Zoning* of the Pico Rivera Municipal Code should be approved for the following reasons and findings:

a) The proposed amendment is consistent with the spirit and integrity of the 1993 General Plan page I-3, as there is need for "...department stores and a wide selection of restaurants".

b) That the proposed amendment is consistent with the General Plan Policy A.5.1 in that the prohibition of further Fast Food restaurants in the northern portion of the City is anticipated to "...encourage commercial development compatible with the level of demand which is expected, and which complements, rather than duplicates, other commercial development in the area.

c) That the proposed amendment is consistent with the intent and purpose of Chapter 18.28, General Commercial Zone, in that the intent is to provide "...a full range and wide variety of retail commercial stores and service establishments that are not dependent on marketing and trading area support solely within the corporate boundaries of the City, but also rely on consumer purchasing power outside of the established community."

d) That the proposed ordinance amendment does not outright prohibit fast food restaurants but rather limits the existing number of fast food restaurants in order to give opportunity to other quality retail establishments such as a grocer, department stores and sit-down restaurants.

e) That there are negative side effects to having an over proliferation of fast food restaurants such as the waste discarded when there is an over proliferation and health effects when choices are limited.

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APPROVED AND ADOPTED this 2nd day of April 2012.

Fred Zermeno, Chairperson

ATTEST:

Benjamin A. Martinez, Secretary
Planning Commission
Community and Economic Development Director

APPROVED AS TO FORM:

Scott E. Nichols, Assistant City Attorney

AYES: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES: None
ABSENT: None
ABSTAIN: None

CITY COUNCIL & SUCCESSOR AGENCY **MINUTES**

Tuesday, March 27, 2012

A Regular Meeting of the City Council and Successor Agency was held in the Council Chamber, Pico Rivera City Hall, 6615 Passons Boulevard, Pico Rivera, California.

Mayor/Chairman Archuleta called the meeting to order at 6:04 p.m. on behalf of the City Council/Successor Agency and Housing Assistance Authority.

PRESENT: Armenta, Salcido, Tercero, Camacho, Archuleta
ABSENT: None

COMMISSIONERS PRESENT:
Joseph Palombi, Parks & Recreation Commission

INVOCATION: Joseph Palombi, Parks & Recreation Commission

PLEDGE OF ALLEGIANCE: Lt. Steve Sanchez, Sheriff Department

SPECIAL PRESENTATIONS:

- Proclamation presented to James "Jim" Cafferty, volunteer with the Tax Assistance Program at the Senior Center
- El Rancho High School Soccer Team Del Rio League Champs

1st PERIOD OF PUBLIC COMMENTS – AGENDA ITEMS ONLY:

Jeffrey Natke:
- Addressed the City Council regarding Item No. 9.

CONSENT CALENDAR:

Minutes:
- Approved City Council and Successor Agency of March 13, 2012
- Received and filed Parks & Recreation meeting of February 9, 2012
- Received and filed Planning Commission meeting of March 5, 2012

2. **Approved 15th Warrant Register of the 2011-2012 Fiscal Year.** (700)
Check Numbers: 250866-251054
Special Checks Numbers: None

3. **Authorize the City Manager, or His Designee to Submit a Grant Application for up to $300,000 Under the California Department of Transportation (CALTRANS) Fiscal Year 2012-2013 Transportation Planning Grant.** (700)

This item was pulled from the Consent Calendar for further clarification and discussion.

4. **Bond Monitoring Policies.** (700)

This item was pulled from the Consent Calendar for further clarification and discussion.

5. **Auditing Contract.** (700)

This item was pulled from the Consent Calendar for further clarification and discussion.

6. **City of Pico Rivera Community Dial-A-Ride Program.** (500)

   1. Approved a 90 day extension of the agreement with Southland Transit Inc. to operate the City's Dial-A-Ride program.

      Agreement No. 99-735-9

7. **Rosemead Boulevard/Mines Avenue Intersection Improvements, CIP No. 21221 – Award a Professional Services Agreement for Construction Management Services.** (500)

   1. Awarded a Professional Services Agreement to KOA Corporation/CMB Consulting located at 1411 W. 190th Street, Suite 525, Gardena, CA 90248 for Construction Management Services for Rosemead Boulevard/Mines Avenue Intersection Improvements, CIP No. 21221 and authorize the Mayor to execute it in a form approved by the City Attorney.

      Agreement No. 12-1288

8. City Hall Parking Lot Light Emitting Diode (LED) Retrofit, CIP No. 21239 – Authorization to Bid. (500)

1. Approved Plans, Specifications and Estimates (PS&E) for the City Hall Parking Lot Light Emitting Diode (LED) Retrofit, CIP No. 21239;
2. Authorized the City Clerk to publish the Notice Inviting Bids; and
3. Approved the Notice of Exemption for the subject project and authorize the City Clerk to file with the County Recorder.

Motion by Councilmember Armenta, seconded by Councilmember Salcido to approve Consent Calendar Items No. 1, 2, 6, 7, and 8. Motion carries by the following roll call vote:

AYES: Armenta, Salcido, Tercero, Camacho, Archuleta
NOES: Salcido

CONSENT CALENDAR ITEMS PULLED:

3. Authorize the City Manager, or His Designee to Submit a Grant Application for up to $300,000 Under the California Department of Transportation (CALTRANS) Fiscal Year 2012-2013 Transportation Planning Grant. (700)

Councilmember Tercero asked how the grant monies would be used with Community and Economic Development Director Martinez stating that the money would be utilized to expand upon the circulation element in the general plan. One of the ideas, he stated, is to be able to do studies on certain/major corridors of the streets by looking at street schemes and creating schemes where the city is promoting more than the automobile on the streets but also by promoting the pedestrian, bicycle safety and so forth.

Motion by Councilmember Armenta, seconded by Councilmember Tercero to: 1) Adopt Resolution No. 6670 authorizing the City Manager, or his designee, to submit an application to Caltrans for Transportation Planning Grant; and 2) Authorize the City Manager, or his designee, to accept a grant from Caltrans for up to $300,000 in Transportation Planning Grant funds and execute all documents necessary to accept the funds. Motion carries by the following roll call vote:

> Resolution No. 6670 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO SUBMIT A GRANT APPLICATION

FOR UP TO $300,000 UNDER THE CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FISCAL YEAR COMMUNITY-BASED TRANSPORTATION PLANNING GRANT

AYES: Armenta, Salcido, Tercero, Camacho, Archuleta
NOES: Salcido

4. Bond Monitoring Policies. (700)

Councilmember Tercero asked if the policy is referring to general or specific bonds. City Manager Bates stated that the policy applies to all bonds and basically acknowledges that a procedure would be followed which may enhance the possibility of improving the bond rating status.

Motion by Councilmember Armenta, seconded by Councilmember Tercero to adopt the bond monitoring policies. Motion carries by the following roll call vote:

Resolution No. 6671 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PICO RIVERA, CALIFORNIA, ADOPTING POST-ISSUANCE POLICIES

AYES: Armenta, Salcido, Tercero, Camacho, Archuleta
NOES: Salcido

5. Auditing Contract. (700)

Mayor Pro Tem Camacho asked if it is good practice for management to choose the contractor. City Attorney Alvarez-Glasman stated that it is staff who reviews, evaluates and recommends to the City Council; they do not make the final selection. He further stated that it is not uncommon for city staff to present and make recommendations to the City Council for two reasons: one because city staff is the most experienced in this arena generally in the details of the auditing firms and secondly staff will ultimately need to work with the selected auditing firm.

Agreement No. 12-1287

Motion by Councilmember Armenta, seconded by Councilmember Tercero to authorize the City Manager to execute a contract with White Nelson Diehl Evans LLP to audit the

City for three years with two one year options to extend the contract. Motion carries by the following roll call vote:

AYES: Armenta, Salcido, Tercero, Camacho, Archuleta
NOES: Salcido

CITY COUNCIL LEGISLATION:

9. Amendment to the Contract between the City of Pico Rivera and the California Public Employees' Retirement System for New Hires – Tier II. (200)

City Manager Bates stated that staff request that Item No. 9 be pulled from the agenda with the following comments. Mr. Bates stated that it should be clear for members of the Council and anyone in the public that has had the opportunity to read the staff report in detail, with some of the challenges it outlines, and has also had the opportunity to look at the mid-year budget report which shows a structural deficit for the city of $3.9 million. He stated that the city's current fiscal position is not sustainable over the long term. The City Council and Senior Management, he stated, have continued to express the desire to address these fiscal challenges without laying off full time personnel. Further, he stated, after nine months of negotiation, it seems clear the city needs to move ahead with rectifying the city's fiscal situation and achieving a balanced budget. Before Council takes action, he stated, staff suggests another round of negotiations measured in weeks not months. Further, he stated, without timely resolution, the only real option left to the city to reduce costs and restore fiscal integrity is to begin a layoff procedure. He stated that it is his hope that staff can work together with our employees and come to an agreement soon.

Mayor Archuleta stated that it would be a good thing for staff to meet with the union members and come together on some agreement because the union is willing to make some concessions and provided that management is willing as well. He asked if an Ad Hoc Committee should be involved.

City Manager Bates stated that under Myers-Milles Brown Act, that responsibility rest with the city. He stated that senior staff members Debbie Lopez and Mike Matsumoto will continue to lead the negotiating team and will have some help from labor council. Mr. Bates stated that staff looks forward to continuing to work with the employee groups and hopes that they will reach consensus because the city does not want to be in a position where the only option left is to lay employees off in order to balance the budget come July 1, 2012.

Mayor Pro Tem Camacho stated that he would like the budget committee to join in the negotiations unless there is something prohibiting that participation. City Attorney Alvarez-Glasman stated that he suggest getting an opinion from labor council before moving in that direction. Generally speaking, he stated, to have members of the City Council in an Ad Hoc or Budget Committee format at the table can detract from the process rather than motivate the process. He stated that there is a process under the Myers-Milles Brown Act of good faith negotiations and some strict adherence that all parties should follow.

Councilmember Armenta asked if this item could be continued to a specific council meeting to get the issue resolved. City Manager Bates stated that the second meeting in April would be a preferred meeting date. Mayor Archuleta stated that direction is hereby given to continue this item to the second meeting in April.

Councilmember Salcido stated that what needs to be followed is the spirit of what has been discussed both privately and publically at the last meeting of genuine negotiation which is a dialogue, and from his perspective is lacking. Mr. Salcido reiterated that the order in which he agreed was to look at the organization internally first, and then the two-tier benefit plan last. He stated that all members of the Council seem to be in agreement with the order that was proposed in the staff report at a previous meeting. He also stated that staff should not set a drop dead deadline.

Mayor Pro Tem Camacho stated that the city needs to move forward and should not set a limitation, but would like to know that if the labor attorneys do not allow their participation in the negotiation process, can the City Council be in the room to listen in on what's taking place. City Attorney Alvarez-Glasman stated that he will get the answer to these questions.

Mayor Archuleta expressed his concerns for the negotiation process and stated that he is flexible with whatever time it takes.

Councilmember Armenta stated that the reason he asked for a definitive date is that the union is anxious to conclude the negotiations as well. Mr. Armenta suggested that if the negotiation teams aren't ready by the end of April then they could ask for an extension.

City Manager Bates suggested that staff not put this specific item back on the agenda at the second meeting in April, but bring back a more comprehensive approach which would include how we settle the two-tier benefit structure, but also how we get to a balance budget so that it would be a more comprehensive discussion of all the items that

were presented in the last report to Council on balancing the budget. Mr. Bates concurred with having a timeline and bringing the item back at the second meeting of April. Councilmembers Salcido and Armenta concurred with the City Manager's suggestion.

SUCCESSOR AGENCY ACTIVITIES: None

NEW BUSINESS: None.

OLD BUSINESS:

Councilmember Tercero asked Parks & Recreation Director Aranda if he had a chance to look at the policy regarding fingerprinting for all volunteers with Director Aranda stating that staff is looking at including this procedure in a resolution that will include a number of other items as well.

Mayor Archuleta asked how the KaBOOM project is coming along in regard to volunteers. Director Aranda stated that the committee is making a selection this week on the playground pieces, going back to the vendor that will be finalizing the plans and then the permits will be able to be pulled for construction. Public Works, he stated, has been out at the site making improvements to the location, parking lot area, creating ADA accessible ramp and doing some improvements to the restroom facility that is adjacent to the playground area. He stated that the build date is April 28, 2012. Mayor Archuleta requested that Director Aranda speak to the Pico Boys regarding some pending issues.

Mayor Pro Tem Camacho inquired about the First Aid Certification for coaches with Director Aranda stating that staff speaks to the groups annually and provides them with information to seek certification for first aid. Some programs, he stated, require first aid certification of the staff.

Mayor Archuleta asked in reference to the unincorporated areas of Whittier if their negative activity goes against the city's status with Lt. Sanchez stating it does not reflect on the city.

2ND PERIOD OF PUBLIC COMMENTS – ALL OTHER CITY-RELATED BUSINESS:

Paula Murga:

- Addressed the City Council regarding political actions of certain council members; unprofessionalism of a certain council member pertaining to the actions of a jester.

Zita Rodriguez:

- Addressed the City Council pertaining to the non-renewal of the CalMet Services agreement; city expenditures on former City Manager, second Assistant City Manager and Herrera & Associates; and her objections to forming the Sister City Committee into a paid commission.

Virginia Aguirre:

- Addressed the City Council to express her disappointment in the Council's decision not to renew the contract with CalMet Services.

Margaret Leccese:

- Addressed the City Council to ask why the City does not do more to support local business; suggested that a percentage of certain purchases stay in the city to support local businesses.

Recessed to Water Authority at 6:54 p.m.

ALL MEMBERS WERE PRESENT

Reconvened from Water Authority at 6:55 p.m.

ALL MEMBERS WERE PRESENT

Recessed to Closed Session at 6:55 p.m.

ALL MEMBERS WERE PRESENT

Reconvened from Closed Session at 7:21p.m.

ALL MEMBERS WERE PRESENT

ADJOURNMENT:

Mayor Archuleta adjourned the City Council meeting at 7:22 p.m. There being no objection it was so ordered.

AYES: Armenta, Salcido, Tercero, Camacho, Archuleta
NOES: None

_____
Bob J. Archuleta, Mayor

ATTEST:

_____
Anna M. Jerome, Assistant City Clerk

I hereby certify that the foregoing is a true and correct report of the proceedings of the City Council and Redevelopment Agency Regular meeting dated March 27, 2012 and approved by the City Council on April 10, 2012.

_____
Anna M. Jerome, Assistant City Clerk

Approved as Submitted
April 2, 2012

PLANNING COMMISSION **MINUTES**

Monday, March 19, 2012

A regular meeting of the Planning Commission was called to order by Chairperson Zermeno at 6:00 p.m., in the City Hall Council Chambers, 6615 Passons Boulevard, Pico Rivera, CA.

STAFF PRESENT:
Julia Gonzalez, Deputy Director of Community and Economic Development
Scott Nichols, Assistant City Attorney
Alicia Villanueva, Recording Secretary

ROLL CALL:

PRESENT: Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno

ABSENT: None

FLAG SALUTE: Led by Commissioner Martinez

APPROVAL OF MINUTES:

March 5, 2012

It was moved by Commissioner Martinez to approve the minutes, seconded by Commissioner Garcia. There being no objection motion carried to approve the minutes of March 5, 2012 as submitted.

PUBLIC HEARING – ZONE CODE AMENDMENT NO. 166 – ESTABLISHING AND PROHIBITING ENTITLEMENTS FOR FAST FOOD AND/OR DRIVE-THROUGH ESTABLISHMENTS WITHIN THE SPECIFIED AREA

Deputy Director Julia Gonzalez proceeded to present staff report dated March 19, 2012, along with a visual presentation. She summarized the adoption of the Fast Food Moratorium. The purpose of the moratorium is to prohibited fast food establishments on the northern side of the city and to allow other types of quality establishment not necessarily sit-down restaurants, but other types of establishments such as discount stores and grocery stores. Previous feedback from residents on the north side of the city indicated there are no services for them between Beverly and Rosemead Boulevards, and that much of the new development has been on Washington and Whittier Boulevards. The ratio in the north side of the city is 1 sit-down restaurant to every three fast food restaurant. On the south the ratio is roughly 1.8, 1.7 to every sit-down restaurant.

Ms. Gonzalez stated that some businesses were difficult to define as fast food restaurants such as coffee and donut shops; Chuck E. Cheese and Zen Buffet's which do not have servers yet are not considered as takeout restaurants. At this point, staff's recommendation is to continue the public hearing to the next Planning Commission meeting of April 2, to further review definition of specific businesses.

Commissioner Elisaldez inquired about the definition of fast food; commenting that Gonzalez Northgate Market has a deli section where food is taken out as described in definition. He asked what category the market would fall under.

Ms. Gonzalez stated the definition reads that when a fast food restaurant is secondary and within an enclosed building the primary use such as a market which sells food in containers will be excluded; gas stations with mini-marts, discounts stores, and grocery markets fall under this definition.

Commissioner Zermeno expressed his concern about donut shops, bakeries, and small markets not being considered as fast food businesses. There are so many of these businesses in the north side of the city. He recommended that bakeries, donut shops, and fast food grocery markets be included.

Ms. Gonzalez stated donut shops and bakeries can be considered which will definitely raise the ratio of fast food to sit-down restaurants. She commented on stand alone businesses such as donut shops and bakeries, and non-stand alone businesses which have a primary use for example a convenient store.

There being no further discussion, Commissioner Garcia moved to open the public hearing and continue it to the Planning Commission meeting of April 2, 2012, seconded by Commissioner Elisaldez. Motion carried by the following roll call:

AYES:	Commissioners Celiz, Elisaldez, Garcia, Martinez, Zermeno
NOES:	None
ABSTAIN:	None
ABSENT:	None

For the benefit of the audience, Mr. Nichols recapped the Commission's action.

PUBLIC COMMENTS: None.

PLANNING COMMISSION REPORTS:

a) City Council Meeting of March 13, 2012 – Received and Filed.
b) City Council Meeting of March 27, 2012 – Commissioner Zermeno confirmed his attendance.

Ms. Gonzalez announced the upcoming General Plan workshop to be held on Wednesday, March 21 at Pico Park.

There being no further business the Planning Commission meeting was adjourned at 6:25 p.m.

Fred Zermeno, Chairperson

ATTEST:

Benjamin A. Martinez, Secretary
Planning Commission
Director of Community and Economic Development

CITY COUNCIL | AGENDA REPORT

To: Mayor and City Council

From: City Manager

Meeting Date: April 10, 2012

Subject: REPLACEMENT OF COMPUTERS

Recommendations:

Approve the purchase of 67 replacement desktop computers from Dell USA LP for an amount not to exceed $70,000.

Fiscal Impact: $70,000 has been budgeted for this purchase.

Discussion:

The City's current computer fleet consists of 160 computers. Staff is recommending replacing 67 outdated systems in an effort to minimize repair costs and increase staff efficiency. The acquisition of the computers will be made through Western States Contracting Alliance (WSCA) contract number WSCA-B27160, ensuring competitive pricing and compliance with municipal purchasing policy.

The computers due for replacement are out of warranty and have been in service for over 5 years. Systems are beginning to fail requiring staff time to repair and maintain them. Over time the failure rates are expected to increase. Also, these computers are running older versions of Microsoft Office; as a result IT staff must ensure functionality with multiple versions of the software. Industry standards measures the useful life of business computer at three years, our current systems are more than two years past their useful lives.

The new computers will be equipped with updated Microsoft Office software. By having all city computers on the same software platform, compatibility issues will be eliminated, increasing staff efficiency. Staff will be able to collaborate with outside agencies more effectively and without document transfer issues. As staff reductions continue through attrition and we ask remaining staff to pick up additional workload, it is important to maintain state of the art equipment to maximize staff efficiency.

Ronald Bates
OM

CITY COUNCIL | AGENDA REPORT

To: Mayor and City Council

From: City Manager

Meeting Date: April 10, 2012

Subject: INTREGRATED SOLID WASTE MANAGEMENT SERVICES AGREEMENT

Recommendation:

Authorize the Mayor to execute an Exclusive Franchise Agreement with NASA Services Inc. for the collection of residential and commercial solid waste.

Fiscal Impact:

The City will continue to receive revenue from solid waste management franchise fees under the terms of the new agreement in monthly installments of $70,833 for Fiscal Years 2011-13.

Discussion:

The City of Pico Rivera's current Solid Waste Collection Franchise Agreement with CalMet Services Inc. expires on June 30, 2012. In April 2011, the City Council conducted an RFP process to obtain proposals for integrated solid waste collection services within the City. The process was very successful, with eight (8) responses, including most of the major competitors in the local waste disposal industry. After thorough review, four (4) contractors were selected for interview and further evaluation.

On March 13, 2012, the City Council selected NASA Services Inc. as the City's exclusive franchise solid waste collection hauler and directed staff to negotiate an agreement that would be returned to the City Council for final approval.

On March 29, 2012, staff met with representatives of NASA Services Inc. and agreed on terms with regard to the award of a multi-year exclusive franchise agreement for solid waste collection services. The Agreement, with minor variations, parallels the Agreement included as part of the RFP process (a redline/blueline final draft of the Agreement is included with City changes resulting from the RFP process in red and the negotiated changes from the March 29 meeting in blue).

The proposal from NASA Services Inc. provides significant improvements over the current agreement. The new agreement will lower the cost of residential collection from $21.03 to $15.50 or 26% decrease and an annual savings of $66 per household. On the commercial side, the cost of a three yard bin also decreases from $119.78 per month to $98.10 per month or an 18% decrease and an annual savings of $260. This equates to a $1.4 million savings per year for solid waste services by residents and businesses of Pico Rivera.

In addition to the saving in rates, various service amenities have improved over the previous agreement. The following matrix describes some significant improvements:

Contract Feature	Description
Length of Term	Four (4) Years. Three (3) year extension for satisfactory performance and at City's option extend for an additional three (3) years.
Refuse Collection	*New* 96-gallon cart. Additional cart charges set by hauler
Recyclables	*New* 96-gallon cart. Second cart without charge.
Greenwaste	*New* 96-gallon cart. Second cart without charge.
Rollout Service	For qualifying seniors. On customer request, the driver will retrieve carts from the customer's yard, empty them, and return them to their storage place.
Special collection	Citywide curbside cleanups on date set by City
Christmas trees	Collection of trees up to 6 feet set next to carts, from Christmas Day to 3rd week in January
Waste Diversion	35% first year, 53% second year, 60% subsequent years
Trucks	New fleet of low-emission CNG vehicles

Although NASA Services has presented a strong implementation plan, staff will continue to meet with them in evaluating their progress as they acquire their fleet, hire

and train their employees and implement their plan to transition service, to determine their ability to launch NASA service on July 1, 2012. In the event that staff determines additional time is needed, staff would exercise the recent extension to CalMet Services to allow for a seamless transition August or September 1, 2012.

Ronald Bates

RB:RC:sp

Attachment: Agreement

AGREEMENT

BETWEEN

CITY OF PICO RIVERA

AND

NASA SERVICES INC.

FOR

INTEGRATED SOLID WASTE

MANAGEMENT SERVICES

* * *

April 5, 2012

AGREEMENT
BETWEEN
CITY OF PICO RIVERA
AND
NASA SERVICES, INC.
FOR
INTEGRATED SOLID WASTE
MANAGEMENT SERVICES

TABLE OF CONTENTS

Page

RECITALS 1

ARTICLE 1 3

DEFINITIONS 3

1.1 AB 939 3
1.2 AFFILIATE 3
1.3 BILLINGS 4
1.4 BIN 4
1.5 BIN SERVICE 4
1.6 BULKY ITEMS 4
1.7 CALRECYCLE 5
1.8 CART 5
1.9 CITY 5
1.10 CITY MANAGER 5
1.11 COLLECT/COLLECTION 5
1.12 COMMERCIAL 5
1.13 COMMERCIAL PREMISES 5
1.14 CONTRACTOR 6
1.15 CONTRACTOR'S PROPOSAL 6
1.16 CONTRACTOR COMPENSATION 6
1.17 CONSTRUCTION AND DEMOLITION DEBRIS 6
1.18 CONTAINER 6
1.19 CPI 7
1.20 CUSTOMER 7
1.21 DISPOSE/DISPOSAL 7
1.22 DISPOSAL SITE(S) 7
1.23 DIVERSION 7
1.24 ELECTRONIC WASTE 7
1.25 ENVIRONMENTAL LAWS 7
1.26 FACILITY 8
1.27 GREEN WASTE 8
1.28 GREEN WASTE PROCESSING FACILITY 8
1.29 GROSS RECEIPTS 8
1.30 HAZARDOUS SUBSTANCE 9
1.31 HAZARDOUS WASTE 9

1.32 HOUSEHOLD HAZARDOUS WASTE ("HHW") 9
1.33 MATERIALS RECOVERY FACILITY ("MRF") 10
1.34 MULTI-FAMILY DWELLING 10
1.35 PERSON 10
1.36 PREMISES 10
1.37 RATE YEAR 10
1.38 RECYCLE/RECYCLING 10
1.39 RECYCLABLE MATERIALS 11
1.40 REFUSE 11
1.41 RESIDENTIAL 11
1.42 RESIDENTIAL PREMISES 11
1.43 ROLL-OFF BOX 11
1.44 SINGLE FAMILY DWELLING 11
1.45 SOLID WASTE 12
1.46 SOLID WASTE HANDLING SERVICES 12
1.47 SOURCE SEPARATED 12
1.48 STATE 12
1.49 TRANSFORMATION 12
1.50 TRANSFER STATION 12
1.51 WASTE GENERATOR 13

ARTICLE 2 14
GRANT AND ACCEPTANCE OF FRANCHISE 14
2.1 GRANT AND ACCEPTANCE OF FRANCHISE, INDEMNITY OF AWARD 14
2.2 ENFORCEMENT OF EXCLUSIVITY 14
2.3 EFFECTIVE DATE 15
2.4 TERM OF AGREEMENT 15
2.4.1 Initial Term 15
2.4.2 Automatic Term Renewal 15
2.4.3 Postponement of Start Date 16
2.5 CITY'S OPTION TO EXTEND TERM 16
2.6 REPRESENTATIONS AND WARRANTIES OF CONTRACTOR 17
2.7 CONDITIONS TO EFFECTIVENESS OF AGREEMENT 18
2.8 DELEGATION OF AUTHORITY 19
2.9 LIMITATIONS TO SCOPE 19
2.10 CITY'S RIGHT TO DIRECT CHANGES 21
2.10.1 General 21
2.10.2 New Diversion Programs 21
2.11 OWNERSHIP OF SOLID WASTE 22
2.12 CONTRACTOR STATUS 23
2.13 CONTRACTOR AUTHORIZATION 23
2.14 PERMITS AND LICENSES 23

ARTICLE 3 24
FEES PAID TO THE CITY 24
3.1 CONTRACTING FEE 24
3.2 FRANCHISE FEE 24
3.2.1 Franchise Fee Amount 24
3.2.2 Timing of Fee Payments 24
3.3 FUTURE FEES 25
3.4 SALES TAX REVENUE 25

ARTICLE 4 ..... **26**
DIRECT SERVICES **26**
4.1 REFUSE 26
4.1.1 General *26*
4.1.2 Residential Cart Refuse Collection *26*
4.1.3 Refuse Cart Overage *27*
4.1.4 Backyard Service for the Disabled and Customers 70 Years of Age or Older *27*
4.1.5 Bin Refuse Collection *27*
4.1.6 Commercial Premises Cart Service *28*
4.1.7 Overflowing Bin *28*
4.1.8 Roll-off Box Service *29*
4.1.9 Temporary Bin Service *29*
4.1.10 Scout Vehicles *29*
4.1.11 Bin Push-out Service *30*
4.1.12 Locking Bins *30*
4.1.13 Redelivery/Return Trip Fee *30*
4.1.14 On-Call Bulky Item Pickup *30*
4.1.15 Citywide Curbside Clean-Up Event *31*
4.1.16 Bulky Item Diversion *32*
4.1.17 Disposal of Electronic and Other Special Wastes *32*
4.1.18 Removal of Former Contractor Containers *32*
4.2 RECYCLING 33
4.2.1 Residential Cart Recycling Collection *33*
4.2.2 Commercial Recyclables Collection *33*
4.2.3 Mixed Waste Processing *33*
4.2.4 Waste To Energy *34*
4.2.5 Warning Notice *34*
4.2.6 Marketing and Sale of Recyclable Materials *35*
4.2.7 Minimum Recycling Requirements *35*
4.2.8 Construction and Demolition Debris Diversion *36*
4.2.9 Sharps Collection *36*
4.3 GREEN WASTE AND OTHER ORGANICS PROGRAMS 36
4.3.1 Single Family Green Waste Collection *36*
4.3.2 Holiday Tree Collection Program *37*
4.3.3 End Uses for Green Waste *37*
4.3.4 Manure Collection *38*
4.3.5 Commercial Food Waste Diversion Program *38*
4.3.6 Residential Curbside Food Waste Pilot Program *38*
4.3.7 Composting Workshops *38*
4.3.8 Free Compost Distribution *39*
4.4 CART SELECTION, DISTRIBUTION AND EXCHANGES 39
4.4.1 Carts *39*
4.4.1.1 Cart Design Requirements *39*
4.4.1.2 Capacity *39*
4.4.1.3 Cart Handles *39*
4.4.1.4 Cart Lid *40*
4.4.1.5 Cart Colors *40*
4.4.1.6 Cart Markings *40*
4.4.2 Cart Performance Requirements *41*
4.4.2.1 Cart Load Capacity *41*
4.4.2.2 Cart Durability *41*
4.4.2.3 Chemical Resistant *42*
4.4.2.4 Stability and Maneuverability *42*

4.4.2.5 *Lid Performance* ... 42
4.4.2.6 *Reparability* ... 43
4.4.3 *Cart Ownership and Maintenance Responsibilities* ... 43
4.4.4 *Bins* ... 43
4.4.5 *Roll-off Boxes* ... 44
4.5 CITY SERVICES ... 44
4.5.1 *City Facilities Collection* ... 44
4.5.2 *City Sponsored Events* ... 44
4.5.3 *Emergency Collection and Disposal Service* ... 45
4.5.4 *Hazardous Waste Collection at City Facilities* ... 45
4.5.5 *Abandoned Item Collection and Alley Sweeps* ... 46
4.5.6 *Community Development Review Services* ... 46
4.5.7 *Large Venue Event Assistance, Event Recycling* ... 46
4.6 OPERATIONS ... 47
4.6.1 *Schedules* ... 47
4.6.1.1 *Collection Days and Hours* ... 47
4.6.1.2 *Review of Schedules and Routing* ... 47
4.6.1.3 *Missed Pickups* ... 47
4.6.2 *Vehicles* ... 48
4.6.3 *Litter Abatement* ... 51
4.6.4 *Personnel* ... 52
4.6.5 *Identification Required* ... 53
4.6.6 *Fees and Gratuities* ... 54
4.6.7 *Non-Discrimination* ... 54
4.6.8 *Routing and Coordination With Street Sweeping Services* ... 54
4.6.9 *Report of Accumulation of Solid Waste; Unauthorized Dumping* ... 54
4.7 TRANSPORTATION OF SOLID WASTE ... 54
4.8 APPROVED FACILITIES ... 55
4.9 STATUS OF DISPOSAL SITE ... 55
4.10 DEDICATED ROUTES ... 56
4.11 ROUTE AUDIT ... 56
4.12 SERVICE EXCEPTIONS; HAZARDOUS WASTE NOTIFICATIONS ... 58

ARTICLE 5 ... 59
OTHER SERVICES ... 59
5.1 CUSTOMER BILLING AND CONTRACTOR COMPENSATION ... 59
5.1.1 *Residential Cart Customers Billed on County Property Tax Roll* ... 59
5.1.2 *Cart Customers Not Billed on Tax Roll* ... 60
5.1.3 *Bin Rates* ... 60
5.1.4 *Contractor's Invoices* ... 60
5.1.5 *Bin, Roll-off and Temporary Services Billing* ... 60
5.1.6 *Billing Disputes* ... 61
5.1.7 *Delinquent Accounts* ... 61
5.1.8 *Customer Billing Adjustments* ... 62
5.1.9 *Exemption from Service* ... 63
5.2 CUSTOMER SERVICE ... 63
5.2.1 *Local Office* ... 63
5.2.2 *Complaint Documentation* ... 64
5.2.3 *Resolution of Customer Complaints* ... 64
5.2.4 *Service Liaison* ... 64
5.3 EDUCATION AND PUBLIC AWARENESS ... 65
5.3.1 *General* ... 65

5.3.2 Implementation and On-going Education Requirements ... *65*
5.3.3 Contractor Representative ... *67*
5.3.4 Community Events ... *67*
5.3.5 Additional Transition Activities ... *68*
5.3.6 Green Media Disk ... *68*
5.4 WASTE GENERATION/CHARACTERIZATION STUDIES ... 68
5.5 EMPLOYMENT OPPORTUNITIES ... 69
5.6 EL RANCHO SCHOOL DISTRICT ... 69

ARTICLE 6 ... 70
CONTRACTOR COMPENSATION AND RATES ... 70
6.1 GENERAL ... 70
6.2 INITIAL RATES ... 70
6.3 SCHEDULE OF FUTURE ADJUSTMENTS ... 70
6.4 METHOD OF ADJUSTMENTS ... 70
6.5 EXTRAORDINARY ADJUSTMENTS ... 71

ARTICLE 7 ... 73
REVIEW OF SERVICES AND PERFORMANCE ... 73
7.1 PERFORMANCE REVIEW MEETING ... 73
7.2 PERFORMANCE SATISFACTION SURVEY ... 74

ARTICLE 8 ... 75
RECORDS, REPORTS AND INFORMATION REQUIREMENTS ... 75
8.1 GENERAL ... 75
8.2 RECORDS ... 75
8.2.1 General ... *75*
8.2.2 Financial Records ... *76*
8.2.3 Solid Waste Records ... *76*
8.2.4 CERCLA Defense and Disposal Records ... *77*
8.2.5 Other Programs' Records ... *77*
8.2.6 Audit ... *78*
8.2.7 Payments and Refunds ... *78*
8.3 REPORTS ... 79
8.3.1 Report Formats and Schedule ... *79*
8.3.2 Monthly Reports ... *79*
8.3.3 Annual Report ... *80*
8.3.4 Financial Report ... *80*
8.4 REPORTING ADVERSE INFORMATION ... 81
8.5 RIGHT TO INSPECT RECORDS ... 81
8.6 FAILURE TO REPORT ... 82

ARTICLE 9 ... 83
INDEMNIFICATION, INSURANCE, BOND AND LETTER OF CREDIT ... 83
9.1 INDEMNIFICATION ... 83
9.2 HAZARDOUS SUBSTANCES INDEMNIFICATION ... 84
9.3 AB 939 INDEMNIFICATION AND GUARANTEE ... 85
9.4 INSURANCE ... 86
9.5 FAITHFUL PERFORMANCE BOND ... 91
9.6 FAITHFUL PERFORMANCE LETTER OF CREDIT ... 91
9.7 FORFEITURE OF PERFORMANCE BOND ... 91
9.8 FORFEITURE OF LETTER OF CREDIT ... 92

9.9 PERFORMANCE SECURITY BEYOND SERVICE TERM 92

ARTICLE 10 93
CITY'S RIGHT TO PERFORM SERVICE 93
10.1 GENERAL 93
10.2 BILLING AND COMPENSATION TO CITY DURING CITY'S POSSESSION 94
10.3 CITY'S RIGHT TO RELINQUISH POSSESSION 94
10.4 CITY'S POSSESSION NOT A TAKING 94
10.5 DURATION OF CITY'S POSSESSION 95

ARTICLE 11 96
DEFAULT, REMEDIES AND LIQUIDATED DAMAGES 96
11.1 EVENTS OF DEFAULT 96
11.2 RIGHT TO TERMINATE UPON DEFAULT AND RIGHT TO SPECIFIC PERFORMANCE 98
11.3 LIQUIDATED DAMAGES 99
11.4 EXCUSE FROM PERFORMANCE 104
11.4.1 Force Majeure 104
11.4.2 Labor Unrest 104
11.4.3 Procedures In Event of Excused Performance 105
11.5 NOTICE, HEARING AND APPEAL OF CITY BREACH 106
11.6 ASSURANCE OF PERFORMANCE 106

ARTICLE 12 107
OTHER AGREEMENTS OF THE PARTIES 107
12.1 RELATIONSHIP OF PARTIES 107
12.2 COMPLIANCE WITH LAW 107
12.3 GOVERNING LAW 107
12.4 JURISDICTION 107
12.5 ASSIGNMENT 108
12.6 CONTRACTING OR SUBCONTRACTING 110
12.7 BINDING ON ASSIGNS 110
12.8 COOPERATION IN PREPARATION FOR TERMINATION OR EXPIRATION OF CONTRACT 110
12.9 PARTIES IN INTEREST 111
12.10 WAIVER 111
12.11 CONTRACTOR'S INVESTIGATION 112
12.12 CONDEMNATION 112
12.13 NOTICE 112
12.14 REPRESENTATIVES OF THE PARTIES 113
12.15 CITY FREE TO NEGOTIATE WITH THIRD PARTIES 113
12.16 COMPLIANCE WITH MUNICIPAL CODE 113
12.17 PRIVACY 114
12.18 PROPRIETARY INFORMATION, PUBLIC RECORDS 114

ARTICLE 13 115
MISCELLANEOUS PROVISIONS 115
13.1 ENTIRE AGREEMENT 115
13.2 SECTION HEADINGS 115
13.3 REFERENCES TO LAWS AND OTHER AGREEMENTS 115
13.4 INTERPRETATION 115
13.5 AGREEMENT 115
13.6 SEVERABILITY 116

13.7 EXHIBITS 116
13.8 ATTORNEYS' FEES 116

Exhibits

1. Contractor's Proposal
2. Initial Maximum Rates
~~3. Corporate Guarantee~~
34. Contractor's Faithful Performance Bond
45. Street Sweeping Routing - October 2011
56. Notary Certification

AGREEMENT

This Agreement for Integrated Solid Waste Management Services (hereinafter the "Agreement") is entered into this ___ day of _____, 2012, by and between the City of Pico Rivera, California, ("City") and NASA Services, Inc. ("Contractor"), for the collection, transportation, recycling, processing, and disposal of solid waste and other services related to meeting the goals and requirements of the California Integrated Waste Management Act.

RECITALS

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

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

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

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

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

WHEREAS, City and Contractor are mindful of the provisions of the laws governing the safe collection, transport, recycling, processing and disposal of solid waste, including AB 939, the Resource Conservation and Recovery Act ("RCRA"), and the Comprehensive Environmental Response, Compensation and Liability Act

("CERCLA"). City and Contractor desire to leave no doubts as to their respective roles and to memorialize that by entering into this Agreement, City is not thereby becoming an "arranger" or a "generator" as those terms are used in CERCLA, and that it is Contractor, not City, who is "arranging for" the collection from premises in the City, transport for disposal, composting or other processing, and recycling of municipal solid waste which may contain hazardous substances; and further to confirm that as a material inducement to City entering into this Agreement, Contractor has agreed to fully indemnify City in connection with any claims, losses, liabilities, lawsuits or actions relating to the inadvertent or intentional collection, transportation and/or disposal of hazardous materials that may occur in connection with Contractor's performance under this Agreement, and

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

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

ARTICLE 1

DEFINITIONS

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

1.1 AB 939

"AB 939" means the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000 et seq.), as it may be amended from time to time, including the 2008 revisions to California Public Resources Code Sections 42920 - 42927 (commonly referred to as SB 1016).

1.2 Affiliate

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

ten percent (10%) shall be disregarded and percentage interests shall be determined on the basis of the percentage of voting interest or value which the ownership interest represents, whichever is greater.

1.3 Billings

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

1.4 Bin

"Bin" means a metal Container with hinged lids and wheels with a capacity of less than or equal to six (6) cubic yards.

1.5 Bin Service

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

1.6 Bulky Items

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

1.7 CalRecycle

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

1.8 Cart

"Cart" means a plastic Container with a hinged lid and wheels serviced by an automated or semi-automated truck with a capacity of no less than 32- and no greater than 101-gallons.

1.9 City

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

1.10 City Manager

"City Manager" means the City Manager of the City of Pico Rivera and his or her designee.

1.11 Collect/Collection

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

1.12 Commercial

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

1.13 Commercial Premises

"Commercial Premises" means Premises located within the boundaries of the City, occupied or used for any purpose other than residential uses. It includes premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding Residential Premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the

property. Notwithstanding any provision to the contrary herein in the Pico Rivera Municipal Code or otherwise, for purposes of this Agreement, Premises upon which the following uses (as defined in the Pico Rivera Municipal Code) are occurring shall be deemed to be Commercial Premises: Assisted Living Facilities, Convalescent Homes, Dormitories, Extended Stay Motels, Group Residential Facilities, Group Care Facilities, Hotels, and Motels.

1.14 Contractor

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

1.15 Contractor's Proposal

"Contractor's Proposal" means the proposal, included as Exhibit 1, submitted by Contractor to City on November 14, 2011 in response to a Request for Proposals dated September 13, 2011. While there are provisions contained in Contractor's Proposal, this Agreement supersedes Contractor's Proposal and is the final written expression of the Parties' Agreement. Contractor represents and warrants that all representations set forth in such proposal are true and correct.

1.16 Contractor Compensation

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

1.17 Construction and Demolition Debris

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

1.18 Container

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

1.19 CPI

"CPI" means the Consumer Price Index (CUUR0000SA0) for All Urban Consumers (CPI-U), all items index - U.S. city average.

1.20 Customer

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

1.21 Dispose/Disposal

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

1.22 Disposal Site(s)

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

1.23 Diversion

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

1.24 Electronic Waste

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

1.25 Environmental Laws

"Environmental Laws" means all federal and state statutes, county, local and City ordinances concerning public health, safety and the environment including, by way of example and not limitation, the Comprehensive Environmental Response,

Compensation and Liability Act of 1980, 42 USC §9601 et seq.; the Resource Conservation and Recovery Act, 42 USC §6902 et seq.; the Federal Clean Water Act, 33 USC §1251 et seq.; the Toxic Substances Control Act, 15 USC §1601 et seq.; the Occupational Safety and Health Act, 29 USC §651 et seq.; the California Hazardous Waste Control Act, California Health and Safety Code §25100 et seq.; the California Hazardous Substance Account Act, California Health and Safety Code §25300 et seq.; the Porter-Cologne Water Quality Control Act, California Water Code §13000 et seq.; the Safe Drinking Water and Toxic Enforcement Act, California Health and Safety Code §25249.5 et seq.; as currently in force or as hereafter amended, and all rules and regulations promulgated there under.

1.26 Facility

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

1.27 Green Waste

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

1.28 Green Waste Processing Facility

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

1.29 Gross Receipts

"Gross Receipts" means any and all revenue received from Billings by City or Contractor, and compensation in any form, of Contractor or subsidiaries, parent companies or other Affiliates of Contractor, for the Collection and transportation of Solid Waste pursuant to this Agreement, in accordance with Generally Accepted Accounting Principles, including, but not limited to, Customer fees for Collection of Solid Waste, without subtracting Disposal fees, City fees or other fees or any other cost of doing business. Sales revenue from the sale of Recyclable Materials is excluded from Gross Receipts for the purpose of calculating Franchise Fees.

1.30 Hazardous Substance

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

1.31 Hazardous Waste

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

1.32 Household Hazardous Waste ("HHW")

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

1.33 Materials Recovery Facility ("MRF")

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

1.34 Multi-Family Dwelling

"Multi-Family Dwelling" means any building or lot containing three (3) or more dwelling units. Multi-Family Dwelling units generally receive Refuse Collection service through the use of shared Bins, but may use Carts. Service is not dependent upon unit count unless specifically stated.

1.35 Person

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

1.36 Premises

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

1.37 Rate Year

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

1.38 Recycle/Recycling

"Recycle" or "Recycling" means the processing of Recyclable Materials for the purpose of returning them to the economy in the form of raw materials for new, reused, or reconstituted products. The Collection, transportation or Disposal of Solid Waste not intended for, or capable of, reuse is not Recycling. Recycling does not include use of Solid Waste for conversion to energy.

1.39 Recyclable Materials

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

1.40 Refuse

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

1.41 Residential

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

1.42 Residential Premises

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

1.43 Roll-off Box

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

1.44 Single Family Dwelling

"Single Family Dwelling" means a dwelling unit in a building containing fewer than three (3) Residential dwelling units. Single Family Dwelling units generally receive

individual Cart Refuse Collection service, but service type is not dependent upon unit count unless specifically stated.

1.45 Solid Waste

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

1.46 Solid Waste Handling Services

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

1.47 Source Separated

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

1.48 State

"State" means the State of California.

1.49 Transformation

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

1.50 Transfer Station

"Transfer Station" means a Facility that receives Solid Waste from Collection vehicles and transfers the material to larger vehicles for transport to landfills and other destinations. Transfer Stations may or may not include MRFs, transferring residual Refuse (Refuse left after the sorting of Recyclable Materials) to landfills and Recyclable

Materials, including Green Waste and/or Construction and Demolition debris, to processors, brokers or end-users.

1.51 Waste Generator

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

ARTICLE 2

GRANT AND ACCEPTANCE OF FRANCHISE

2.1 Grant and Acceptance of Franchise, Indemnity of Award

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

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

2.2 Enforcement of Exclusivity

Contractor shall be responsible for enforcing the exclusivity of this Agreement. City shall have the right to enforce the exclusivity provisions hereof if, in its absolute and sole discretion, it chooses to do so, but shall have no obligation to do so for the benefit of Contractor or otherwise. City additionally shall have the right, but not the obligation, to request that Contractor enforce the exclusivity provisions hereof. Contractor shall have an affirmative obligation to enforce such exclusivity provisions when requested to do so by City. For example, Contractor may be asked to notify City

of inappropriately placed Containers and to place warning tags on such Containers. City may direct Contractor to impound such Containers in accordance with the City's Municipal Code and may be entitled to charge Container owners City-approved fees for such impounding. If Contractor requests that City take administrative, law enforcement, or other legal action to protect Contractor's exclusive rights, or otherwise enforce the exclusivity of this Agreement (including the adoption of any resolution or ordinance intended to facilitate the enforcement of the exclusive rights granted herein), Contractor shall reimburse City for all administrative, law enforcement, or other legal costs and fees related to any such action. Contractor's obligation to reimburse City shall not apply to any criminal enforcement by City.

2.3 Effective Date

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

2.4 Term of Agreement

2.4.1 Initial Term

The term of this Agreement (the "Term") shall be four (4) years, commencing on July 1, 2012, and expiring June 30, 2016, subject to postponement as provided in Section 2.4.3, extension as provided in Section 2.4.2 and 2.5, as applicable. Notwithstanding the foregoing, the unexcused failure or refusal of Collector to perform any material term, covenant, obligation or condition contained in this Agreement shall give rise to the right, in favor of City, for earlier termination of this Agreement for cause in accordance with the procedures elsewhere contained herein.

2.4.2 Automatic Term Renewal

This Agreement will automatically extend for an additional three (3) year term, to June 30, 2019, without need for further City Council action, provided Contractor is substantially meeting the terms of the contact. The City Manager will review contract compliance to date after the third Rate Year. If the City Manager has reasonably determined that these provisions for the extension have not been substantially met, the City Manager shall inform Contractor in writing no less than ninety (90) days prior to the June 30, 2016 termination date of the City's intent not to extend the Agreement.

The City Manager shall provide to Contractor, either in its written notice not to extend, or within ten (10) days of a subsequent Contractor request, why the determination was made that Contractor has not met the requirements of the Agreement, as described above. Contractor shall have the opportunity to appeal the findings of the City Manager to the City Council, provided Contractor provides written notice of its intent to appeal to the City Council within thirty (30) days of receipt of receiving City Manager's notice not to extend.

If the City Manager, or City, elects not to extend this Agreement under this Section 2.4.2, City may still invoke its option to extend under Section 2.5 with written notification from the City Manager to Contractor. Such notification may, but is not required to, be included in the same communication informing Contractor of City's intent not to extend under this Section 2.4.2.

2.4.3 Postponement of Start Date

City may postpone the start date for up to three months (until October 1, 2012) at its sole discretion. To postpone the date, the City Manager will provide written notification to Contractor thirty (30) days prior to previously agreed-upon start date (either July 1, 2012 or as subsequently determined under this section). City may request multiple postponements if it deems it necessary. If the start date is delayed, expiration/termination and extension dates in Sections 2.4.1 and 2.4.2, and the timing of the first monthly Franchise Fee payment per Section 3.2.2, will be delayed by the same period.

The intent of the potential postponement(s) of the start date is to ensure a smooth transition. City may request evidence of delivery of vehicles and Containers and of completion of any other transition task, and may require a meeting with Contractor prior to the 30 day advance noticing period, or make any other reasonable requests to ensure to the City's satisfaction that Contractor is fully prepared for the transition.

2.5 City's Option to Extend Term

City shall have the sole option to extend the Term of this Agreement up to thirty-six (36) months following the initial Agreement Term under Section 2.4.1 or extended Agreement Term under Section 2.4.2. The City may, upon at least ninety-day (90-day) advance written notice to the Contractor prior to the expiration of the Term of this Agreement, exercise this extension option. If City provides this extension notice, the

Agreement will automatically renew monthly, up to a maximum of thirty-six (36) months. This extension period shall terminate, upon the earlier of: (i) the expiration of the aforementioned thirty-six (36) months, or (ii) the date City instructs Contractor that the contact will end, provided written notice of termination is provided to Contractor by City at least ninety (90) dates prior to this termination date.

2.6 Representations and Warranties of Contractor

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

a) Contractor is ~~wholly owned by _____, which is~~ duly organized and validly existing as a corporation under the laws of the State of California.

b) Neither the execution of this Agreement nor the delivery by Contractor of services nor the performance by Contractor of its obligations hereunder: (1) conflicts with, violates or results in a breach of any applicable law; (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of Contractor) or instrument to which Contractor is a party or by which Contractor or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument; or (3) will result in the creation or imposition of any encumbrance of any nature whatsoever upon any of the properties or assets of Contractor.

c) There is no action, suit or other proceeding as of the date of this Agreement, at law or in equity, or to the best of Contractor's knowledge, any investigation, before or by any court or governmental authority, pending or threatened against Contractor ~~or _____ [parent/guaranteeing company]~~ which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the validity or enforceability of this Agreement or any such agreement or instrument entered into by Contractor ~~or _____ [parent/guaranteeing company]~~ in connection with the transactions contemplated hereby, or which could materially and adversely affect the ability of Contractor to perform its obligations

hereunder or which would have a material adverse effect on the financial condition of Contractor ~~or _____ [parent/guaranteeing company]~~. This provision may be waived by the City acting through its City Manager.

d) Contractor has no knowledge of any applicable law in effect as of the date of this Agreement that would prohibit the performance by Contractor of this Agreement and the transactions contemplated hereby.

e) Contractor has made an independent investigation, satisfactory to it, of the conditions and circumstances surrounding this Agreement and the work to be performed by it, and is satisfied that those conditions and circumstances will not impair its ability to perform the work and provide the Collection services required by this Agreement.

f) The information supplied by Contractor in all submittals made in connection with negotiation and execution of this Agreement, including all materials in Exhibits of this Agreement, and all representations and warranties made by Contractor throughout this Agreement are true, accurate, correct and complete in all material respects on and as of the Effective Date of this Agreement. Note that inaccuracies in Contractor's Proposal, such as material omissions of past and pending litigation as requested under the Request for Proposals through which this Agreement was procured, is grounds for termination of this Agreement.

g) Contractor's representative, designated in Section 5.2.4, shall have authority in all daily operational matters related to this Agreement. City may rely upon action taken by such designated representative as action of Contractor unless the actions taken are not within the scope of this Agreement.

2.7 Conditions to Effectiveness of Agreement

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

a) Accuracy of Representations. All representations and warranties made by Contractor and set forth in this Agreement shall be accurate, true and correct on and as of the Effective Date.

b) Absence of Litigation. There shall be no litigation pending in any court challenging the award of this Franchise to Contractor or the execution of this Agreement or seeking to restrain or enjoin its performance. This provision may be waived by the City, acting through its City Manager.

c) Furnishing of Insurance, Bond, and Letter of Credit. Contractor shall have furnished evidence of the insurance, bonds and letter of credit required by Article 9, and shall comply with all ongoing requirements relating thereto.

d) Contractor shall have paid the contracting fee to City, as provided in Section 3.1.

2.8 Delegation of Authority

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

2.9 Limitations to Scope

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

a) The sale or donation of Source-Separated Recyclable Material by the Waste Generator to any Person or entity other than Contractor; provided, however, if the Generator is required to pay monetary or non-monetary consideration for the Collection, transportation, transfer, or processing of Recyclable Material, even if the Generator receives a reduction or discount in price (or in other terms of the consideration the Generator is required to pay), the transaction shall not be considered a sale or donation;

b) Solid Waste, including Recyclable Materials and Green Waste, which is removed from any Premises by the Waste Generator, and which is transported personally

by such Generator (or by his or her full-time employees) to a processing or Disposal Facility in a manner consistent with all applicable laws and regulations;

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

d) Bagster® Service, whereby Solid Waste is Collected using a vehicle with an overhead crane in a soft-sided polypropylene Container purchased by the Customer at a local hardware or home supply store;

e) The Collection, transfer, transport, Recycling, processing, and disposal of animal remains from slaughterhouse or butcher shops for use as tallow;

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

g) The Collection, transfer, transport, Recycling, processing, and disposal of Hazardous Substances, Hazardous Waste, Household Hazardous Waste and radioactive waste regardless of its source;

h) Construction and Demolition Debris which is removed by a duly-licensed construction or demolition company or as part of a total service offered by said licensed company or by the City, where the licensed company utilizes its own equipment and has performed the associated construction/demolition services in the City;

i) The Collection, transfer, transport, Recycling, processing, and Disposal of Solid Waste generated from City-owned and/or operated premises, public works projects, City-sponsored events or other City-related activities, by City through City officers or employees in the normal course of their City employment; and,

j) Solid Waste Handling Services for governmental agencies other than City, which may have facilities in City, but over which City has no jurisdiction in connection with the regulation of Solid Waste.

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

the term of this Agreement, and the scope of this Agreement shall be limited by all applicable current and developing laws and regulations. In the event that future interpretations of current law, future enactments or developing legal trends limit the ability of City to lawfully grant Contractor the scope of services as specifically set forth herein, Contractor agrees that the scope of this Agreement will be limited to those services and materials which may be lawfully provided, and that City shall not be responsible for any lost profits claimed by Contractor as a result thereof.

2.10 City's Right to Direct Changes

2.10.1 General

City may direct Contractor to perform additional services (including new Diversion programs, additional Solid Waste processing, etc.) or modify the manner in which it performs existing services or Bills for services. Pilot programs and innovative services which may entail new Collection methods, and different kinds of services and/or new requirements for Waste Generators are included among the kinds of changes which City may direct. Contractor acknowledges that State law may increase the Diversion requirement during the term of this agreement and Contractor agrees to propose services to meet such Diversion requirements. Contractor shall be entitled to an adjustment in its Contractor Compensation for providing such additional or modified services, including a profit factor equal to ten percent (10%) of the incremental cost of such additional or modified services. City may utilize cost components included in the Contractor's Proposal in calculating equitable rate adjustments. If City and Contractor cannot agree on compensation for new or additional services within ninety (90) days from the date City first requests a proposal from Contractor, then City may contract with other parties for such services, which shall be considered exempt from the exclusivity provisions of Section 2.1.

2.10.2 New Diversion Programs

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

- Collection methodology to be employed (equipment, manpower, etc.).
- Equipment to be utilized (vehicle number, types, capacity, age, etc.).

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

2.11 Ownership of Solid Waste

City and Contractor understand and agree that it is Contractor, and not City, who will arrange to Collect Solid Waste, that City has not, and, by this Agreement does not, instruct Contractor on its Collection methods, nor supervise the Collection process; nor do the Parties intend to place title to Solid Waste Collected by Contractor in City. Rather, the Parties intend that whatever, if any, title in and to the Solid Waste that is Collected by Contractor which otherwise might exist in or with City in the absence of this Agreement is hereby transferred to Contractor; and further that if Contractor gains title to such Solid Waste it is by operation of law and agreement with its Customers and is not the result of this Agreement. Subject to the provisions of this Agreement, and unless City exercises its rights to direct the location for Disposal and processing of Solid Waste, Contractor shall have the right to retain, Recycle, process, dispose of, and otherwise use Solid Waste Collected pursuant to the terms hereof in any lawful fashion or for any lawful purpose; and, further, shall have the right to retain any benefit resulting from its right to retain, Recycle, process, dispose of, or reuse the Solid Waste which it Collects. City's right to redirect Solid Waste is not intended to impact Contractor's right to retain Recyclables revenue pursuant to Section 4.2.6~~5~~ of this Agreement. Ownership of Solid Waste shall transfer to Contractor when Customer places it at point of Collection.

Pursuant to Section 4.8, City reserves the right to designate the Solid Waste Facilities, including the Disposal Sites, to be used by Contractor. If City directs Company to a Facility other than a Solid Waste Facility chosen by Contractor (or directs Contractor to change the amount of Solid Waste being delivered to a Facility), and in doing so it adversely affects the ability of Contractor to meet either or both of the requirements of

Section 4.2.7~~6~~ and/or Section 9.3, then in this event the City and Contractor shall meet and confer and mutually agree on revised obligations for Sections 4.2.7~~6~~ and 9.3. In addition, if any such exercise by City serves to ~~significantly~~ change Contractor's cost of disposal, processing and transportation of Solid Waste, rates may be equitably adjusted.

2.12 Contractor Status

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

2.13 Contractor Authorization

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

2.14 Permits and Licenses

Contractor shall acquire and maintain all necessary permits and licenses for the Collecting, transporting, processing, and storing of Solid Waste including Recyclables, disposing of Solid Waste, and the Recycling of Recyclables as required under this Agreement. Failure to maintain all required permits shall be deemed a material breach of contract for which City may terminate this Agreement as provided in Section 11.2. Contractor must follow requirements of the Pico Rivera Municipal Code, including, but not limited to, obtaining a City of Pico Rivera business license.

ARTICLE 3

FEES PAID TO THE CITY

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

3.1 Contracting Fee

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

3.2 Franchise Fee

3.2.1 Franchise Fee Amount

In consideration of the exclusive Franchise granted pursuant to this Agreement, the Contractor shall pay to the City an annual "Franchise Fee," equal to $850,000 per year (pro-rated) for the first two Rate Years, through June 30, 2014. This Franchise Fee shall be adjusted for each subsequent Rate Year by the change in the average monthly CPI index for the twelve-month period ended the December prior to the start of the Rate Year versus the average monthly index for the preceding twelve-month period. For example, the Franchise Fee for the Rate Year July 1, 2014 to June 30, 2015 shall be equal to $850,000 adjusted by the change in the average monthly CPI from January 2013 to December 2013 versus the average monthly CPI from January 2012 to December 2012. Franchise Fees shall be paid per Section 3.2.2.

3.2.2 Timing of Fee Payments

On or before the fifteenth (15th) day of each month during the Term of this Agreement, Contractor shall remit one twelfth of the annual the Franchise Fee due to City for that Rate Year. For example, the monthly Franchise Fee payments to be made by the 15th of each month from July 2012 through June 2013 shall be one-twelfth of $850,000, or $70,833~~$70.803~~ per month. If the Franchise Fee is not paid on or before the fifteenth

(15th) day of the month, Contractor shall pay to City a penalty in an amount equal to ten percent (10%) of the amount owed for the month, plus twelve percent (12%) per annum prorated for each day of delinquency.

3.3 Future Fees

In the event that City implements a new fee, or requests reimbursement for road impacts from Contractor's vehicles, Contractor shall be entitled to a rate adjustment in an amount sufficient to recover the fee from Customers. City may elect to have Contractor pay monthly, or on another schedule as City identifies. City may set deadlines and late fees, and additional fees would be subject to audit.

3.4 Sales Tax Revenue

~~[MAY BE ADJUSTED BASED UPON PROPOSAL]~~

Contractor agrees to use commercially reasonable efforts to establish a point of sale for substantial equipment purchases by Contractor or its Affiliates through establishing a local office within the City and adjusting its purchasing policies for this purpose, so as to facilitate the City's receipt of sales tax revenue. Contractor's efforts will be undertaken in accordance with applicable law, and the parties agree that Contractor is not required to undertake any actions that could result in the imposition of fines, penalties or damages related to payment or non-payment of sales taxes, or the distribution of sales tax revenue. At a minimum, Contractor shall initially purchase twelve Collection vehicles from an in-City business prior to the start of service, and purchase compressed natural gas, office supplies and vehicle parts in the City on an on-going basis.

ARTICLE 4

DIRECT SERVICES

4.1 Refuse

4.1.1 General

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

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

4.1.2 Residential Cart Refuse Collection

Contractor shall provide all Customers at Single Family and Multi-Family Dwellings without Bin Service, with one new 96-gallon Cart ("Refuse Cart(s)"), and shall Collect all Refuse placed therein for Collection not less than once per week. If requested by Customer, Contractor shall provide 64-gallon Carts. If there is a dispute between a Customer and Contractor as to whether Cart or Bin service shall be provided, City will make the final determination. If Residential units share Refuse Carts due to space constraints or otherwise, each unit shall still be assessed the full Residential Cart service rate.

Customers that regularly require more than one Refuse Cart may request additional Carts for an additional charge per Cart per month in accordance with the approved rate schedule.

4.1.3 Refuse Cart Overage

Residential Cart Customers may periodically generate more Refuse than will fit in the Refuse Cart(s). Residential Customers are therefore entitled to two (2) annual pickups per calendar year of material that does not fit in the Refuse Cart(s) at no additional cost. One pickup shall consist of up to the equivalent of three (3) large bags, boxes or barrels of Refuse. Residential Customers may be charged per pickup in accordance with the approved rate schedule for overage pickups above two (2) per year. In addition to the two (2) free pickups, Contractor shall Collect all additional Refuse placed out for Collection in the Residential Customer's own Containers (bags, barrels, etc.) at no additional charge for two (2) weeks beginning each December 26. This service is limited to Refuse that could otherwise be placed in the Refuse Cart, and not Bulky Items which are Collected in accordance with Sections 1.6 and 4.1.15. Commercial Customers may request Cart overage Collections in accordance with the approved rate, but are not entitled to free overage collections.

4.1.4 Backyard Service for the Disabled and Customers 70 Years of Age or Older

Contractor shall provide disabled Customers, and Customers that are seventy (70) years of age or older, with backyard service at no additional charge. Contractor will remove Refuse, Recyclable and Green Waste Containers and Green Waste bundles from Customer's storage area, place them out for Collection, and return Containers to Customer's storage area after Collection, ensuring that all doors or gates are closed securely. In order to qualify as disabled under this section, Customers must have been issued a handicap placard from the Department of Motor Vehicles, or otherwise obtained approval to receive such service from the City. Additionally, walk-out service need not be provided if an able-bodied person under seventy (70) years of age resides with the disabled Customer.

4.1.5 Bin Refuse Collection

Contractor shall provide Bin Service to Single Family Customers that request this service, Multi-Family Customers not receiving Cart service, and Commercial Customers. Contractor shall Collect and remove all Refuse that is placed in Bins at least once per week, and more frequently if required to handle the waste generated at the Premises where the Bins are located. City shall make final determination as to the number and size of Containers, and frequency of Collection to be provided to

Customers. Special consideration shall be given when determining the pickup areas to ensure that the flow of traffic is not impeded.

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

4.1.6 Commercial Premises Cart Service

As an alternative to the requirements of Section 4.1.5, Contractor shall offer Collection in 96-gallon Refuse Carts to Customers at Commercial Premises that do not have space for a Bin. Commercial Cart Customers shall receive one Refuse Cart to be Collected once per week. If Contractor and Customer have a disagreement as to whether a Refuse Cart is appropriate, or if City determines the Collection in a Refuse Cart causes health and safety or other concerns, City shall make the final determination as to whether Collection in a Refuse Cart may occur.

4.1.7 Overflowing Bin

Customers that regularly produce more Refuse than their current level of service can accommodate may have their service level increased in accordance with the following procedure:

First Incident in Three Month Period – If more material is placed for Collection than fits in a Bin, Contractor shall photograph the overflowing Bin, Collect the Solid Waste, and send to the Customer (at both the service and billing addresses) the picture and a letter instructing that additional instances may result in an increase in the level of service.

Second Incident in Three Month Period – Upon the second event of an overfilled Bin in a three-month period, Contractor shall photograph the overflowing Bin, Collect the Solid Waste, and send to the Customer the picture and a letter instructing that a third incident in that same three month period may result in an increase in the level of service.

Third Incident in Three Month Period – Upon the third event of an overfilled Bin in a three-month period, Contractor shall photograph the overflowing Bin, Collect the Solid Waste, and send to the Customer the picture and a letter requesting that Customer increase its service level. If the Customer declines, Contractor may petition City to

permit Contractor to increase the service level to accommodate the higher demand for service. City will make best efforts to respond to a service increase request within thirty (30) days; however, City approval is required prior to increasing a Customer's service level without prior Customer consent, regardless of the time City takes to approve or not approve such a change.

4.1.8 Roll-off Box Service

Contractor shall provide exclusive permanent and temporary Roll-off Box Collection service upon request. Contractor must deliver a temporary Roll-off Box to a Customer within twenty-four (24) hours of request (Saturdays, Sundays and holidays identified in Section 4.6.1.1 excluded).

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

Permanent Roll-off Box service shall be Billed at a pull plus dump rate, meaning a flat rate for service plus a per ton rate for the Solid Waste Collected. Temporary Roll-off Box service shall be Billed at a rate inclusive of service and disposal or processing of up to six (6) tons. Tonnage above six (6) tons shall be billed at the permanent Roll-off Box per ton rate. ~~Customers with loads of permanent or temporary Roll-Off Boxes that are over ten (10) tons may be charged an overage fee for tonnage above ten.~~ If Contractor can determine that a load is greater than ten (10) tons prior to Collection, Contractor may instruct Customer to reduce the load to no more than ten (10) tons.

4.1.9 Temporary Bin Service

Contractor shall provide exclusive temporary Bin Service to Customers upon request. Contractor must deliver a temporary Bin to a Customer within twenty-four (24) hours of request (Saturdays, Sundays and holidays identified in Section 4.6.1.1 excluded). Rates for temporary Bin Service are listed separately in the approved rate schedule.

4.1.10 Scout Vehicles

Scout vehicles are defined as vehicles that transport a Solid Waste Container to and from the point of Collection by a Collection vehicle. Scout vehicle service was provided

for seventeen (17) Bins at the start of service under this Agreement, and this number is not anticipated to increase significantly during the Agreement Term. Contractor may continue to charge existing scout service Customers for this service, if it is operationally required to service the Bin. Other Customers may not be charged for scout service without advance written permission from the City, and such charge will only be approved if the Bin cannot otherwise be positioned for Collection.

4.1.11 Bin Push-out Service

Contractor may not charge a fee for pushing or rolling Bins to point of Collection.

4.1.12 Locking Bins

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

4.1.13 Redelivery/Return Trip Fee

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

4.1.14 On-Call Bulky Item Pickup

Contractor shall provide Bulky Item pickup service to all Single Family and Multi-Family Customers.

Each Residential Cart Customer, and Single Family Customers with Bin service, shall be entitled to ten (10) Bulky Item pickups per calendar year at no additional charge.

Each Multi-Family Building will be entitled to the equivalent of one (1) Bulky Item pickup per calendar year per dwelling unit at no additional charge.

Customers may put out up to four (4) Bulky Items at each pickup. <u>If more than four (4) items are placed out for pickup, each additional four (4) items may be considered an</u>

additional pickup. Contractor may instruct Customers to provide Contractor with a minimum of one (1) business day's notice for the items which shall be Collected on the Customer's regular Collection day. Contractor shall Collect all Bulky Items as defined in Section 1.6 including items referred to as Electronic Waste. The following provisions shall apply to this program:

- No single item that cannot be handled by two (2) workers will be accepted.
- The following items will not be picked up: Hazardous Substances, Hazardous Waste, including waste oil or anti-freeze. (For the purposes of this section, universal wastes such as fluorescent bulbs, household batteries, and televisions, monitors and other items referred to as Electronic Waste are not considered hazardous and will be Collected by and disposed of in accordance with this section as well as Sections 4.1.16 and 4.1.17 by Contractor.)
- Contractor shall record by class and weight (in tons) the Solid Waste Collected from Bulky Item pickups. Contractor shall record the kinds and weights (in tons) of this Solid Waste that is diverted from the landfill through Recycling, reuse, Transformation or other means of Diversion.

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

4.1.15 Citywide Curbside Clean-Up Event

Contractor shall provide one Residential curbside clean-up event each calendar year at no additional charge to City or Customers. All Residential Cart Customers may participate and place for Collection an unlimited quantity of Bulky Items. Events may be held over multiple weekends, one section of the City at a time. Dates are to be approved by the City in advance. Contractor is responsible for advertising this event. Items Collected during this event will be handled in accordance with Sections 4.1.16, and 4.1.17.

4.1.16 Bulky Item Diversion

Bulky Items Collected by Contractor in accordance with Section 4.1.14 and 4.1.15, or otherwise Collected under this Agreement, may not be landfilled or disposed of until the following hierarchy of Diversion efforts has been followed by Contractor:

1) Reuse as is;

2) Disassemble for reuse or Recycling;

3) Recycle;

4) Dispose.

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

4.1.17 Disposal of Electronic and Other Special Wastes

Contractor shall divert waste requiring special handling, such as Electronic Waste Collected in accordance with Sections 4.1.14, 4.1.15 or 4.5.5, or by other means under this Agreement, by taking these goods to a properly permitted Facility, and not by landfilling.

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

4.1.18 Removal of Former Contractor Containers

If any Solid Waste enterprise providing Solid Waste Handling Services to Customers prior to the Effective Date does not remove the Containers it had in use prior to the Effective Date, City may direct Contractor to Collect and recycle any or all of such Containers at no additional charge to City or Customers.

4.2 Recycling

4.2.1 Residential Cart Recycling Collection

Contractor shall provide all Customers receiving Cart Refuse Collection with a new 96-gallon Cart for Collection of Recyclable Materials ("Recycling Cart(s)"), and shall Collect all Recyclable Materials placed therein for Collection not less than once per week. Contractor shall Collect Recyclable Materials from each Customer on the same day as Customers' Refuse Cart is Collected.

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

Customers that regularly fill their Recycling Cart(s) may request additional Recycling Cart(s) at no additional charge.

4.2.2 Commercial Recyclables Collection

Contractor~~Franchisee~~ shall provide Recycling services to Multi-Family Bin and Commercial Customers in accordance with the approved rate schedule. Contractor shall distribute 96-gallon Recycling Carts to all Multi-Family Customers, and provide Recyclables Collection and processing services, at no additional charge.

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

4.2.3 Mixed Waste Processing

At no additional cost, Contractor shall process 25% of~~mixed~~ Refuse Collected from Residential Refuse Carts at a mixed waste processing facility to recover Recyclables not

placed in the Recycling Cart~~and Commercial Bins in sufficient quantities to guarantee a minimum recovery rate of ____% of the total Bin Refuse waste stream Collected~~.

~~[TO BE COMPLETED BASED ON PROPOSAL]~~

4.2.4 Waste To Energy

Contractor shall deliver sufficient quantities of Refuse Collected to Waste-to-Energy Facilities for diversion credit as necessary to ensure that Contractor meets the minimum diversion requirements under Section 4.2.7.~~Contractor shall deliver at least one-third of Refuse Collected from Residential Cart Customers to a Waste-to-Energy facility for diversion credit.~~

~~Contractor shall deliver at least one-half of Refuse Collected from Commercial Customers (Multi-Family Bin Customers and businesses with Bin or Cart service) to a Waste-to-Energy facility for diversion credit, after removal of Recyclables.~~

4.2.54 Warning Notice

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

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

4.2.65 Marketing and Sale of Recyclable Materials

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

4.2.76 Minimum Recycling Requirements

A. Contractor shall divert from landfilling a minimum percentage~~of _____%~~ of all Solid Waste it Collects under this Agreement as listed below:~~.~~

Calendar Year	Minimum Diversion of Hauler-Collected Solid Waste
2013	35%
2014	53%
2015 through end of term	60%

Recycling of materials not Collected by the Contractor is not to be counted towards meeting this requirement. For the purposes of this Section 4.2.76.A, diversion includes Recycling, Transformation and other forms of converting Solid Waste into energy to the extent that such diversion is accepted by the State toward meeting the City's diversion goal under AB 939.

If Recycling programs do not to produce anticipated results necessary to reach these diversion levels, Contractor shall implement additional programs and/or direct additional Solid Waste to Waste-to-Energy facilities as necessary to meet these requirements at no additional cost to the City.

B. Contractor shall also recycle or divert from landfill sufficient waste to ensure that the City meets current AB 939 requirements, as amended by SB 1016, for 50% Diversion City-wide. Contractor shall only be considered to have met this requirement under this Agreement if the City's annual report to CalRecycle shows a greater than 50% Diversion rate and if CalRecycle approves the City's reports as having a greater than 50% Diversion rate in connection with efforts to meet City's AB 939 Diversion goals. Currently, meeting the 50% diversion rate is determined by whether the City remains below its target disposal pounds per capita per day, which was calculated to represent a 50% diversion rate.

C. Contractor must meet both Diversion obligations in subsections A and B above; meeting one requirement does not relieve Contractor of the other. Liquidated damages shall be assessed under Section 11.3 for failure to meet these goals. (Contractor's stated intent is to reach 75% diversion of hauler-Collected Solid Waste, but failure to reach this higher level will not subject Contractor to the assessment of liquidated damages.)

4.2.8~~7~~ Construction and Demolition Debris Diversion

Contractor will bring all loads of mixed Construction and Demolition Debris to a construction and demolition debris processing facility designated under this contract for separation and recovery of this material. Designated facilities include facilities approved by the City for use by self-haulers, facilities identified in Section 4.8 of this Agreement that process Construction and Demolition Debris, and any facility for which Contractor requests City's approval. City's approval will be based upon the facility's ability to divert material from landfilling and the effect of the facility's tipping fee on Customer rates. Contractor shall divert a minimum of 75~~80~~% of all Construction and Demolition Debris Collected.

Contractor may deliver separated loads of Construction and Demolition Debris, such as clean dirt, concrete or rebar, to facilities specializing in the reuse of such materials, provided this material is diverted from landfilling.

4.2.9~~8~~ Sharps Collection

Contractor shall provide pre-paid mail-back Sharps Containers to all City ~~R~~residents at no additional charge for the Agreement Term. Containers may be picked up at Contractor's office in Montebello. Contractor may require residents to show proof of residency in the City before receiving Containers.

~~[TO BE COMPLETED BASED UPON PROPOSAL]~~

4.3 Green Waste and Other Organics Programs

4.3.1 Single Family Green Waste Collection

Contractor shall provide all Customers receiving Cart Refuse Collection with a 96-gallon Cart for Collection of Green Waste ("Green Waste Cart(s)"). The Green Waste Carts shall be new, or Contractor may utilize the 96-gallon Green Waste Carts distributed to Customers under the previous City Solid Waste Collection agreement, if

such Carts are purchased from the previous hauler by the Contractor. Contractor shall Collect all Green Waste placed in Green Waste Carts, as well as all Green Waste bundled as set forth below, and put out for Collection by Customers not less than once per week on the same day as Refuse Collection. Contractor shall, at a minimum, Collect and divert the types of Green Waste defined in Section 1.27.

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

Customers may request one (1) additional Green Waste Cart at no additional charge. Contractor may charge for a third cart in accordance with the approved rate schedule.

4.3.2 Holiday Tree Collection Program

Contractor shall operate an annual holiday tree Collection program from December 26 until at least January 12. During this period, all holiday trees placed out for Collection by Residential Cart or Bin Customers shall be Collected by Contractor. After this period, trees will be Collected as Bulky Items under Section 1.6. Trees up to seven (7) feet in length will be Collected and diverted without Customers needing to cut them. Contractor may request that Customers with larger trees cut the trees to pieces no longer than seven (7) feet. Contractor will divert all holiday trees from landfilling, with the exception of trees that cannot be diverted due to flocking, tinsel or ornaments.

4.3.3 End Uses for Green Waste

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

4.3.4 Manure Collection

Contractor will provide two-cubic-yard Bins for manure Collection. Contractor shall Collect manure at least once per week.

4.3.5 Commercial Food Waste Diversion Program

Contractor shall Collect and divert food waste from Commercial Customers upon Customer request through a source separated program, providing at a minimum 1.5 yard and 3 yard Bins, in accordance with the approved rate schedule.

4.3.6 Residential Curbside Food Waste Pilot Program

Contractor shall conduct a curbside Food Waste pilot program that includes a minimum of 200 Single Family Customers for a period of at least six months. Program shall begin within the first 12 months of service under the Agreement. Contractor and City shall mutually agree on the timing and format of the pilot program. Contractor shall collect baseline data prior to the start of the program and shall collect data during program, as agreed upon with City, to facilitate an evaluation of the program's effectiveness. Contractor is responsible for all outreach materials, additional equipment and other costs associated with this pilot program.

4.3.7 Composting Workshops

Contractor shall provide the following at no additional charge:

Contractor will conduct quarterly composting training workshops for Residents, which will include training and demonstrations of both backyard composting and vermin-composting, and their benefits.

Contractor shall rotate the location of the workshops around the City to make attendance convenient for Residents City-wide. Locations and dates shall be subject to City approval.

Contractor will mail composting information and workshop schedules to Residents twice per year, and will post the information on its website.

Contractor will provide home composting bins for purchase at the workshops, and will research and apply for grants to fund free or discounted compost bins for City residents.

4.3.8 Free Compost Distribution

Contractor will conduct four Residential compost give-a-way events per calendar year.

4.4 Cart Selection, Distribution and Exchanges

4.4.1 Carts

4.4.1.1 Cart Design Requirements

The Carts shall be manufactured by injection or rotational molding and meet the Cart design and performance requirements as specified below. All Carts selected shall be subject to City approval. Refuse and Recycling Carts will be new. Green Waste Carts will either be new, or will be the Green Waste Carts in use immediately prior to the start of service under this Agreement if Contractor purchases such Green Waste Carts from the prior contractor.

4.4.1.2 Capacity

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

- 60 to 70-gallons, and
- 90 to 101-gallons.

4.4.1.3 Cart Handles

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

4.4.1.4 Cart Lid

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

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

4.4.1.5 Cart Colors

The Refuse, Recycling and Green Waste Carts will be differentiated by color. The colors shall be colorfast and resistant to fading as a result of weathering or ultraviolet degradation. Color must be uniform within each Container, including replacement Carts distributed throughout the Term. Refuse Carts will be brown. Recycling Carts will be blue. Green Waste Carts will be green. ~~[COLORS TO BE COMPLETED BASED UPON PROPOSAL]~~

4.4.1.6 Cart Markings

New Carts shall be hot stamped. Hot stamping must be approved by City prior to ordering Carts. Graphics indicating which materials may and may not be placed in each cart and instructions on how to properly dispose of HHW, shall be included on the Cart lid. Cart information shall be bilingual in English and Spanish.

4.4.2 Cart Performance Requirements

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

4.4.2.1 Cart Load Capacity

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

Cart Size (Gallons)	Minimum Load Capacity (LBS)
90-101	200
60-70	130

4.4.2.2 Cart Durability

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

- Maintain their original shape and appearance;
- Be resistant to kicks and blows;
- Require no routine maintenance and essentially be maintenance free;
- Not warp, crack, rust, discolor, or otherwise deteriorate over time in a manner that will interfere with the intended use;
- Resist degradation from ultraviolet radiation;
- Be incapable of penetration by biting or clawing of household pets (i.e., dogs and cats);
- The bottoms of Cart bodies must remain impervious to any damage that would interfere with the Cart's intended use after repeated contact with gravel, concrete, asphalt or any other rough and abrasive surface;

- All wheel and axle assemblies are to provide continuous maneuverability and mobility as originally designed and intended; and,

- Resist degradation by other airborne gases or particulate matter currently present in the ambient air of the City.

4.4.2.3 Chemical Resistant

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

4.4.2.4 Stability and Maneuverability

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

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

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

4.4.2.5 Lid Performance

Cart lid assemblies shall meet the following minimum requirements:

- Prevent damage to the Cart body, the lid itself or any component parts through repeated opening and closing of the lid by residents or in the dumping process as intended;

- Remain closed in winds up to twenty-five (25) miles per hour from any direction. All lid hinges must remain fully functional and continually hold the lid in the original designed and intended positions when either opened or closed or any position between the two extremes; and,

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

4.4.2.6 Reparability

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

4.4.3 Cart Ownership and Maintenance Responsibilities

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

4.4.4 Bins

Contractor shall provide Customers with Bins for Collection of Solid Waste. All Bins will be new within 90 days of the start of service. Customers may obtain Bin compactors and Roll-off compactors from either Contractor or a third party; the leasing of such equipment is outside the scope of this Agreement. Contractor shall maintain its Bins in a clean, sound condition free from putrescible residue. Bins shall be constructed of heavy metal, or other suitable, durable material, and shall be watertight and well painted. Wheels, forklift slots, and other appurtenances, which were designed for movement, loading, or unloading of the Bin, shall be maintained in good repair. Contractor shall inspect, and if necessary or requested by the Customer, clean or replace all Containers once per year at no charge. Contractor shall perform cleaning or replacement of Bins more frequently if necessary, in accordance with the approved rate schedule, to prevent a nuisance caused by odors or vector harborage. Customer may request additional cleanings in accordance with the approved rate schedule. Contractor shall remove graffiti at no additional charge from any Bin within twenty-four (24) hours of request by City or Customers. All Bins provided by Contractor shall remain the property of Contractor.

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

4.4.5 Roll-off Boxes

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

4.5 City Services

4.5.1 City Facilities Collection

Contractor shall Collect and dispose of all Refuse, Recyclable and Green Waste material put in Containers for Collection at Premises owned and/or operated by the City now and in the future at no charge, including no charge for locking Bins, scout service, push-out service or other special services. Service levels and number of facilities serviced may increase during the Term of this Agreement without any additional compensation paid to the Contractor. Such Premises include, but are not limited to, City Hall, City offices, parks, City yard (including street sweepings delivered to City yard or other location identified by City within City limits such as Whittier Fertilizer) and street maintenance operations. Collections shall be scheduled at a time mutually agreed upon by Contractor and City.

4.5.2 City Sponsored Events

Contractor shall provide Solid Waste, ~~and~~ Recycling and Organics/Food Waste Collection and Disposal/processing service for City-sponsored events. This shall include providing Containers (Bins, Roll-off Boxes, clearly labeled Recycling and Organics/Food Waste Containers and cardboard waste boxes with liners) to Collect and dispose of, or process, all Solid Waste and Recyclable Materials. The Contractor shall provide these services at City-sponsored events, at no cost to City or ratepayers. Current City-sponsored events include, but are not limited to:

- Community Pride Day;

- Easter Eggstravaganza;
- 4th of July Celebration;
- Fall Recreation and Health EXPO;
- Halloween Spooktacular;
- Holiday Food Distribution;
- Family Holiday Festival and Tree Lighting Ceremony, and
- Christmas Basket Food Distribution.

City may replace events that are discontinued with events requiring comparable Solid Waste and Recycling Collection service levels. City may also add events at no additional cost to the City.

Contractor shall provide staffing at City-Sponsored events to assist event participants in properly separating, diverting and Disposing of Solid Waste at the event. Contractor shall provide at least one staff member per four sets of Containers (one each of Refuse, Recycling and Organics Containers).

4.5.3 Emergency Collection and Disposal Service

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

4.5.4 Hazardous Waste Collection at City Facilities

Contractor shall Collect as needed, and properly dispose of, Hazardous Waste that is generated by City staff through activities conducted on behalf of the City or at City facilities at no additional charge. Contractor may limit the quantity of material to be Collected in any Rate Year to a cost of Seventy Thousand ($70,000) per Rate Year, as adjusted by the average annual change in CPI, calculated on the change in the average monthly CPI for the twelve months ended the December prior to the Rate Year versus the prior twelve-month average. City may require Contractor to supply third-party invoices to support Contractor costs.

4.5.5 Abandoned Item Collection and Alley Sweeps

Contractor shall drive the following alleys at least once per week (day to be determined mutually by parties) and Collect all abandoned items identified in the alley by Contractor, or called in to Contractor by the City, at no additional charge, within one (1) business day of identification or notification:

1. Mines Avenue Alley - Alleys running parallel to, on the north and south sides of, Mines Avenue, between Lindsay Avenue and Rimbank Avenue.

2. Paramount Place Alley – Alleys running parallel to, on the east side of, the 7700 block of Paramount Place from Slauson Avenue to the south to Warvale St. to the North.

3. Lindsey Alley – Alleys running parallel to, on the east and west side of, the 5300 block of Lindsey Ave. from Havenwood St. to the south to Catherine St. to the north.

City crews will Collect items abandoned elsewhere in the City and dispose of those items at City yard. Contractor will properly divert from landfilling or dispose of such items in accordance with Sections 4.1.16 and 4.1.17.

4.5.6 Community Development Review Services

Upon City request and at no additional charge, Contractor will review building permit applicant's plans and advise regarding adequacy of Container storage space and access, particularly to accommodate Recycling programs.

4.5.7 Large Venue Event Assistance, Event Recycling

Contractor will assist planners of large venue events with reporting and planning needs as may be useful in meeting the requirements of AB 2176 at no additional charge. Contractor shall provide Recycling services upon request to special event planners.

~~4.5.8 Capacity Guarantee~~

~~[TO BE COMPLETED BASED UPON PROPOSAL]~~

4.6 Operations

4.6.1 Schedules

4.6.1.1 Collection Days and Hours

To preserve peace and quiet, Solid Waste shall only be Collected from Residential areas and Commercial areas adjacent to Residential areas between 6:00 a.m. and 6:00 p.m. Solid Waste shall only be Collected from other Commercial areas between 5:00 a.m. and 6:00 p.m. Collection is only permitted Monday through Saturday. Contractor may not make exceptions to these Collection days and times without advanced written approval from the City. If the regularly scheduled Collection day falls on New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day, Collection days for the remainder of that week shall all be postponed one Collection day.

4.6.1.2 Review of Schedules and Routing

Contractor shall review its operations plan outlining the Collection routes, intervals of Collection and Collection times for all materials Collected under this Agreement with City upon thirty (30) days written notice requesting said review. Contractor shall submit a copy of its Commercial and Residential Collection schedule and route map within seven (7) days if requested by City. If the plan is determined to be inadequate by City, Contractor shall revise it, incorporating any changes necessary to make it satisfactory to City within thirty (30) days. No change in schedules and routing shall be implemented for fifteen (15) days after Contractor receives approval from City and notifies Customers.

4.6.1.3 Missed Pickups

Contractor shall Collect a missed pickup of Refuse, Recyclable Materials, and/or Green Waste within twenty-four (24) hours of notification by Customer or City.

4.6.2 Vehicles

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

B. Specifications. All route vehicles shall use compressed natural gas ("CNG") or liquefied natural gas ("LNG") within twelve (12) months of the start of service under this Agreement. Contractor shall be in compliance with all rules and regulations currently in force or passed during the Agreement Term, including SCAQMD and the Air Resource Board's regulations, in regards to all vehicles used in the City. No rate adjustments shall be made for such changes in law. All vehicles used by the Contractor in providing Solid Waste Collection services shall be registered with the California Department of Motor Vehicles. All such vehicles shall have watertight bodies designed to prevent leakage, spillage or overflow.

Roll-off Box vehicles, Container delivery vehicles, scout vehicles, supervisor pickup trucks, and vehicles used for holiday tree Collection, special events and Bulky Item Collection are only required to use LNG or CNG fuel to the extent required by law, including SCAQMD and Air Resources Board regulations, with no rate adjustments granted for such changes in law.

C. Vehicle Identification. The Contractor's name, local telephone number, and a unique vehicle identification number designed by the Contractor for each vehicle shall be prominently displayed on all vehicles, in letters and numbers no less than (3) three inches high. The Contractor shall not place the City's name and/or any City logos on the Contractor's vehicles without advance written approval from the City Manager. Vehicles shall all be painted in a standard color. City must approve truck labeling.

D. Collection Vehicle Billboards. Contractor agrees to install frames on one side of its Collection vehicles that provide service in the City, for placement of City billboards, at no additional cost to the City. The side of Collection vehicle to carry the billboard shall be determined by City. City is responsible for manufacturing of the billboards, at

City cost, at the dimensions provided by the Contractor. Contractor shall be responsible for affixing and removing the billboards at Contractor's cost. City may request up to two (2) fleet-wide billboard change-outs per rate year. Billboards will remain on vehicles for up to sixty days at City's discretion. Periods longer than sixty days require Company approval. City has the exclusive right to promote City events and provide public information through the use of billboards on Collection vehicles.

E. Cleaning and Maintenance

1) The Contractor shall maintain all of its properties, vehicles, Facilities, and equipment used in providing service under this Agreement in a good, safe, neat, clean and operable condition at all times.

2) Vehicles used in the Collection of Solid Waste shall be painted, thoroughly washed, and thoroughly steam-cleaned on a regular basis so as to present a clean appearance. The City may inspect vehicles at any time to determine compliance with this Agreement. The Contractor shall also make vehicles available to the Los Angeles County Health Department for inspection, at any frequency it requests. The Contractor agrees to replace or repair to the City's satisfaction, any vehicle that the City determines to be of unsightly appearance, leaking, or in unsatisfactory operating condition.

3) The Contractor shall repaint all vehicles used in the Collection of Solid Waste within sixty (60) days' notice from the City, if the City determines that their appearance warrants painting. City shall not request that vehicles be painted more than once every three (3) years.

4) The Contractor shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. The Contractor shall reasonably perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule. The Contractor shall keep accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation) and shall make such records available to the City upon request.

5) The Contactor shall repair, or arrange for the repair of, all of its vehicles and equipment for which repairs are needed because of accident, breakdown or any

other cause so as to maintain all equipment in a safe and operable condition. The Contractor shall maintain accurate records of repair, which shall include the date and mileage (or hours of operation), nature of repair and the verification by signature of a maintenance supervisor that the repair has been properly performed.

6) Upon request by the City, the Contractor shall furnish the City a written inventory of all equipment, including Collection vehicles, used in providing service, and shall update the inventory annually. The inventory shall list all equipment by manufacturer, ID number, date of acquisition, type, and capacity.

F. **Operation**.

1) Vehicles shall be operated in compliance with the California Vehicle Code, and all applicable safety and local ordinances. The Contractor shall not load vehicles in excess of the manufacturer's recommendations or limitations imposed by State or local weight restrictions on vehicles.

2) Equipment shall comply with US EPA noise emission regulations, currently codified at 40 CFR Part 205, and other applicable noise control regulations, and shall incorporate noise control features throughout the entire vehicle. In no event shall the noise level of equipment used for Collection exceed seventy-five (75) dB when measured at a distance of twenty-five (25) feet from the vehicle, five (5) feet from the ground. Contractor shall submit to the City, upon City's request, a certificate of vehicle noise level testing of all vehicles by an independent testing entity. The Contractor shall store all equipment in safe and secure locations in accordance with the City's applicable zoning regulations.

3) Contractor shall be responsible for any damage resulting from or directly attributable to any of its operations, and which it causes to: the City's driving surfaces (excluding normal wear and tear), whether or not paved; associated curbs, gutters and traffic control devices; other public improvements; and private roads and alleys.

G. **City Inspection Per Code.** The City may cause any vehicle used in performance of this Agreement to be inspected and tested at any commercially reasonable time and in such manner as may be appropriate to determine that the vehicle is being maintained in compliance with the applicable provisions of the State

Vehicle Code, including all Vehicle Code sections regarding smog equipment requirements. The City may direct the removal of any vehicle from service if that vehicle is found to be in nonconformance with applicable codes. No vehicle directed to be removed from service by the City shall be returned to service until it conforms with applicable codes, and its return to service has been approved by the City.

H. **Brake Inspections.** The brake system of each vehicle used in performance of this Agreement shall be inspected and certified according to State law by the California Highway Patrol or by a brake inspection station licensed by the California Highway Patrol. Notice of certification shall be made available to the City within thirty (30) days of request. Failure to submit the required certification if requested shall be grounds for terminating this Agreement.

I. **Correction of Defects.** Following any inspection, the City Manager shall have the right to cause the Contractor, at its sole cost and expense, to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly. The City Manager's determination may be appealed to the City Council, which decision shall be final.

4.6.3 Litter Abatement

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

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

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

Bins, Contractor may address habitual offenders in accordance with Sections 4.1.3 and 4.1.7.

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

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

4.6.4 Personnel

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

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

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

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

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

F. Compliance with Immigration Laws. Contractor shall be knowledgeable of and comply with all local, state and federal laws which may apply to the performance of this Agreement. Contractor warrants and represents that all of its employees, including any and all prospective employees hired to perform services for the City under this Agreement and the employees of any subcontractor retained by the Contractor to perform a portion of the services under this Agreement, are and will be authorized to perform the services contemplated by this Agreement in full compliance with all applicable state and federal laws, rules and regulations, including, but not limited to, the Immigration Nationality Act of 1952 (commencing with Section 1101 of Title 8 of the United States Code), and the Immigration Nationality and the Immigration Reform and Control Act of 1986 (commencing with Section 1324a of Title 8 of the United States Code), as amended. Contractor agrees to verify the legal status of all of its employees and provide documentation of such verification whenever requested by the City. If Contractor discovers that any employee it has retained is not in compliance with immigration laws, Contractor agrees to terminate such employee.

4.6.5 Identification Required

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

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

4.6.6 Fees and Gratuities

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

4.6.7 Non-Discrimination

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

4.6.8 Routing and Coordination With Street Sweeping Services

Contractor shall coordinate route schedules with City's street sweeping schedule so that Collection days precede street sweeping days each week when feasible by no more than two days.

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

4.6.9 Report of Accumulation of Solid Waste; Unauthorized Dumping

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

4.7 Transportation of Solid Waste

Contractor shall transport all ~~Refuse~~Solid Waste Collected under this Agreement to a City-approved Facility (e.g. Transfer Station, waste-to-energy Facility, Green Waste Processing Facility, MRF, Disposal Site). Contractor agrees to make all reasonable efforts to separate Recyclable Materials from Refuse for Diversion from landfill Disposal.

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

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

4.8 Approved Facilities

The Contractor shall dispose of Refuse Collected that is not required to be processed at the approved Disposal Site. Contractor must receive written advance approval from City to use each Transfer Station, Transformation Facility, processing Facility or other Facility used by Contractor in the fulfillment of this Agreement. Contractor is responsible for ensuring that each Facility it uses is properly permitted prior to requesting City approval to use such Facility. Unless and until the City instructs otherwise, the designated Disposal Site is the Puente Hills Landfill/MRF or Sunshine Canyon Landfill, and the other designated Facilities are Community Recycling and Resource Recovery in Sun Valley, Direct Disposal in Los Angeles, American Reclamation in Los Angeles, Allan Company in Baldwin Park, Sun Valley Paper Stock in Sun Valley, Mission Recycling in Pomona, All Green Electronics Recycling in Tustin, Commerce Refuse to Energy in Commerce, Paramount Resource Recycling in Paramount, Royal MRF in Paramount (when established), Downey Area Recycling and Transfer Facility ("DART") in Downey, and, if otherwise made available to Contractor, Whittier Fertilizer in Pico Rivera. ~~:~~

~~[TO BE COMPLETED BASED UPON PROPOSAL]~~

4.9 Status of Disposal Site

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

4.10 Dedicated Routes

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

4.11 Route Audit

Once during the first year, and thereafter at City request (but not more than once every three (3) years), Contractor shall conduct an audit of its Residential and/or Commercial Collection routes in the City. City may use information from the audit to develop a request for proposals for a new service provider. City may instruct Contractor when to conduct the audit in order for the results to be available for use in preparation of a request for proposals or for other City uses. City may also instruct Contractor to conduct an audit at a time that would produce the most accurate Customer service information for a new service provider to use in establishing service with Customers. In setting these audit dates, City will establish due dates for Contractor providing routing and account information, and later, the report, to City.

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

<u>For Residential Cart Customers (Residential Route Audit):</u>

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

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

- Route number;
- Truck number;
- Account name;
- Account number;

- Account service address;
- Account type (Residential, Commercial, Roll-off);
- Service level per Contractor Billing system (quantity, size, frequency);
- Observed Containers (quantity and size).
- Container condition;
- Proper signage; and,
- Graffiti.

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

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

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

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

4.12 Service Exceptions; Hazardous Waste Notifications

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

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

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

ARTICLE 5

OTHER SERVICES

5.1 Customer Billing and Contractor Compensation

5.1.1 Residential Cart Customers Billed on County Property Tax Roll

(A) City Billing. City shall Bill Residential Cart Customers for basic monthly Collection services on the Los Angeles County property tax rolls. City shall pay Contractor by the end of each month for services rendered during that calendar month. This monthly payment shall be equal to the 1/12 of annual Solid Waste Collection charges, net of any City fees that may be assessed as a percentage of revenue or on a per unit basis, placed on the County property tax roll. City assumes risk of non-payment by Residential Cart Customers only to the extent the charges are Billed on the County property tax roll.

(B) Offsets. Prior to making the monthly payment for Residential Cart service Billed on the tax roll, the City may, but is not required to, retain franchise fees, any other City fees that are overdue, liquidated damages owed to City under Section 11.3, or other amounts due City by Contractor.

(C) Contractor Billing of Approved Ancillary Services. Contractor shall bill Cart Customers for additional Carts (more than one (1) Refuse Cart and more than two (2) Green Waste Carts) on a quarterly basis. Contractor shall be responsible for Billing Customers directly for Bulky Item Collection above the annual maximums, or other ancillary charges as approved by the City. Contractor assumes risk of non-payment of ancillary services for which it Bills.

(D) Service Changes During Fiscal Year. For services changes that cause an increase or decrease to the monthly rate owed by a Residential Cart Customer during the Rate Year, Contractor shall either Bill the Customer the additional revenue, or refund over-Billing to the Customer until the following July 1, when a correction shall be made on the County property tax roll Billing. Contractor shall calculate the net change in franchise fees owed due to such adjustments, and itemize and adjust these amounts on Contractor's monthly franchise fee reports and payments to the City.

5.1.2 Cart Customers Not Billed on Tax Roll

Contractor shall be responsible for Billing Cart Customers that City does not Bill through the County property tax roll for any reason. If Contractor and Customer cannot agree as to whether the Customer shall be Billed through the County property tax roll, the City Manager shall make a final determination. Rates charged to Customers Billed by City shall be the same as Customers Billed on the County property tax roll.

These Customers shall be Billed no sooner than the first day of the period Billed for, with payment to be due no sooner than the last day of the service period Billed for or 30 days after the invoice date, whichever is later. Contactor assumes the risk of non-payment related to any services for which it Bills.

5.1.3 Bin Rates

Contactor shall Bill Bin Customers monthly at the beginning of the month, with payment due no sooner than thirty (30) days after the invoice date. Contractor shall Bill any one-time charges, such as extra pickups or extra Bin cleanings. Contractor assumes the risk of non-payment by Bin Customers.

5.1.4 Contractor's Invoices

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

5.1.5 Bin, Roll-off and Temporary Services Billing

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

For individually serviced Customers who request temporary Roll-off Box or temporary Bin service, Contractor will accept major credit cards for payment. Individually serviced

Customers who do not use credit cards may be required by the Contractor to post a security deposit or to pay on a "Cash on Delivery" (C.O.D.) basis. Any unused portion of a security deposit will be refunded to the Customer within five (5) business days of the termination of service.

5.1.6 Billing Disputes

(A) City Payments to Contractor. If the Contractor disputes the amount paid in any monthly payment relating to City's monthly payment to Contractor for Residential services provided, Contractor will provide the City with written objection within thirty (30) days of the receipt of such payment indicating the portion of the paid amount that is being disputed and providing all reasons then known to Contractor for its objection to or disagreement with such amount. If the City and the Contractor are not able to resolve such dispute within thirty (30) days after Contractor's objection, either party may refer such dispute to mediation. Nothing contained in this subsection shall limit the authority of any authorized officer of City or any other governmental agency to raise a further objection to any amount paid to, or requested by, Contractor pursuant to an audit conducted pursuant to this Agreement or applicable law.

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

5.1.7 Delinquent Accounts

Contractor shall be responsible for collecting unpaid Contractor Billings, subject to limitations under this Section.

Contractor may not stop service at Premises Billed by the City (Residential Cart Customers) for reason of non-payment without advance written approval from City.

City is under no obligation to approve service suspension or to assist in any way with collection of delinquent Billings, and shall not be held liable for any Customer's failure to pay for services that must continue to be provided to Customers.

Contractor may apply the following delinquent account procedures to Multi-Family and Commercial Customers Billed by Contractor, including suspension of service, in order to encourage payment. However, City may require Contractor to resume providing service to Multi-Family Customers, despite non-payment and without incurring any obligation on the City's part to compensation Contractor for such services.

The following steps shall be taken in regards to delinquent accounts prior to suspension of service for non-payment:

1. If payment is not made within fifteen (15) days after the due date, Contractor shall notify Customer in writing that the payment is late.

2. If payment is not made within thirty (30) days after due date, Contractor may notify Customer that the invoice is over-due and~~, if a Commercial Customer,~~ that non-payment will result in suspended service and further collection action.

3. If payments is not made within fifteen (15) days after this subsequent notice, Contractor may provide written notice to Customer that the Billing remains unpaid and~~, if a Commercial Customer,~~ that service will be suspended if payment is not received within fifteen (15) days (a minimum of ninety (90) days from initial Billing).

This entire sequence of notifications must be followed by Contractor prior to suspending service~~, or~~ pursuing collection or charging a late fee. City is not required to lien property or assist in payment collection process.

Contractor may assess a 2% per month late fee on Multi-Family Bin and Commercial Customer balances outstanding more than 60 days beyond the due date (a minimum of 90 days from initial Billings).

5.1.8 Customer Billing Adjustments

Should Contractor determine that Contractor has under-billed a Customer, or Customers, Contractor may back-Bill for no more than six (6) months. Overbilling reimbursements to Customers are not limited.

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

5.1.9 Exemption from Service

City may establish guidelines to exempt properties from receiving, and paying Contractor for, Solid Waste Collection service. Exempt properties may include vacant or unoccupied properties, or properties in which owners can document alternative means of self-haul Disposal.

5.2 Customer Service

5.2.1 Local Office

Contractor shall maintain a local office. Said office shall be open for Customers, at a minimum, from 8:00 a.m. to 5:00 p.m., Monday through Friday, and from 8:00 a.m. to 12:00 p.m. on Saturday, exclusive of holidays ("Office Hours").

A responsible and qualified bilingual (English and Spanish speaking) representative of Contractor shall be available at the local office, and by telephone, during Office Hours on Monday through Friday. Contractor shall have either a representative or an answering service available by telephone on Saturdays during Office Hours, and an answering service or a message machine available outside of office hours. Calls received outside of Office Hours, or by answering service on Saturdays, shall be responded to on the next business day. Contractor shall provide City with a twenty-four (24) hour emergency number to a live person, not voice-mail.

Contractor's telephone system shall be adequate to handle the volume of calls typically experienced on the busiest days. If City receives more than five (5) complaints in thirty (30) days that Customers are unable to contact Contractor by phone, City may require Contractor to increase capacity. Contractor shall record Customer complaints regarding Customer service personnel in accordance with Section 5.2.2. Customer service representatives receiving multiple complaints are to be transferred from Customer service duties or, with City approval, disciplined and appropriately trained.

5.2.2 Complaint Documentation

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

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

All written Customer complaints and inquiries shall be date-stamped when received. All complaints shall be initially responded to within one (1) business day of receipt. Contractor shall use best efforts to resolve complaints within two (2) business days. Contractor shall log action taken by Contractor to respond to and remedy the complaint.

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

5.2.3 Resolution of Customer Complaints

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

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

5.2.4 Service Liaison

Contractor shall designate in writing a field supervisor as "Service Liaison" who shall be responsible for working with City and/or City's designated representative(s) to resolve Customer service related complaints. City shall have the right to approve the

Contractor's choice for a liaison. City shall be notified in advance of any change in Service Liaison.

5.3 Education and Public Awareness

5.3.1 General

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

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

5.3.2 Implementation and On-going Education Requirements

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

- **Initial Mailings** - Prior~~Four months prior~~ to the start of service, ~~two months prior to the start of service,~~ and during the first month of service~~At least forty-five (45) days prior to the start of Collection service under this Agreement~~, Contractor will prepare and mail information~~an initial mailing~~ to all Customers explaining the transition from the existing Solid Waste Handling Service program to the new program as defined by this Agreement. The mailings will describe program changes, route changes if any, dates of program implementation, Recycling and Diversion programs available, and other pertinent information.

- **Instructional "How-to" Packets** – An information packet shall be provided to each Customer at the start of service under this Agreement and to each new Customer throughout the Agreement term. This packet shall: describe available services, including available Recycling and Diversion programs; provide instructions for proper use of the Carts and Bins provided (such as how to place Carts or other permitted items for Collection, the types of materials to be placed in each Cart); detail holiday Collection schedules; and provide Billing and Customer service telephone numbers. This packet will contain updated information on how to use Containers, when, where and how to place Solid Waste for Collection, and who to contact with service or Billing questions, and for Bulky Item pickups.

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

- **Annual Brochures/Mailings** – Not less than once per year during each Rate Year, Contractor shall prepare and distribute to each Customer a mailing to update Customers regarding program basics, program changes, holiday schedules and other service related information. Mailings should promote and explain: all Solid Waste programs offered by City and Contractor (such as Recycling, Green Waste, holiday tree and Bulky Item Collections) described in detail; the environmental, regulatory, and other benefits of participating in Recycling; how to properly dispose of Household Hazardous Waste such as syringes, paint, etc.; Collection schedules, including holiday schedules; Customers service numbers; and the procedures to begin and terminate services. Content must be approved by City, and City may require the inclusion of certain information.

  This brochure shall be at least four (4) pages, and printed in at least one (1) color, color to be selected by City. City may request that this brochure be included in one of City's monthly newsletters, in which case Contractor shall develop the piece to meet City's mailing specifications. Alternatively, City may require Contractor to mail this brochure at Contractor's cost. Contractor is responsible for all costs associated with the development of this piece. Contractor shall provide at least 1,000 additional copies of this brochure each year directly to City for distribution at City Hall, by City at community events, or as the City may otherwise determine

beneficial. Contractor shall also produce additional copies for its own distribution responsibilities at community events and otherwise.

- **Article and Press Release Assistance** – Contractor shall provide articles and information for City's inclusion in the City's monthly newsletters upon City request. Contractor will assist City in drafting press releases related to solid waste and recycling events and developments affecting the City.

- **Corrective Action "Red-Tag" Notice** – Contractor shall develop a corrective action notification form, or "Red-Tag notice, for use in instances where a Customer sets out inappropriate materials for Collection, that explains the appropriate manner for Disposal of such items.

- **Website** – Contractor shall develop and maintain a website to enable Customers to contact Contractor, and to display holiday schedules, Sharps program information, proper HHW disposal procedures, which materials are to be placed in Recycling Containers, and other useful information. Contractor shall provide a website for environmental education to be used by schools, businesses and the general community, such as its EchoRecycle website, or a comparable replacement.

- **Classroom Education Materials** – Contractor shall prepare and provide classroom education materials to the public K-12 schools in Pico Rivera, if requested by the school districts. Materials provided shall be in sufficient quantities to service all classrooms and students for which materials are requested.

5.3.3 Contractor Representative

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

5.3.4 Community Events

At the direction of City, Contractor shall participate in and promote Recycling and other Diversion techniques at community events including Earth Day, and other local activities. Such participation would normally include providing, without cost,

Collection and educational and publicity information promoting the goals of City's Solid Waste program.

5.3.5 Additional Transition Activities

Door-to-Door Education and Outreach - From two months prior to two months after implementation of service, Contractor will conduct door-to-door education and outreach to facilitate a smooth transition and improve Recycling.

Mandatory Commercial Recycling Visits - Door-to-door visits to Commercial sector will focus on implementing recycling programs in compliance with mandatory commercial recycling requirements, and will include offering training meetings for Customers and follow-up visits after new Recycling program implementation.

Community-Wide Events - Contractor shall conduct multiple workshops to teach Residential and Commercial Customers about the transition to the new Agreement and hauler, and the programs available.

5.3.6 Green Media Disk

Contractor shall develop, reproduce and distribute to all Customers (including Single-Family Dwellings, individual Multi-Family Dwelling Units, and each business) a Green Media disk. The disc will contain information regarding all Zero Waste Programs in place in the City, provide links to other City services, and provide programs and other online information useful to residents and businesses. Contractor will provide means for City the ability to track disk usage and open rates for links visited.

5.4 Waste Generation/Characterization Studies

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

Contractor will provide to City on a quarterly basis, for City's use in the City newsletter or otherwise, a chart reporting all recyclables and green waste tonnage recovered from City Customers on a monthly basis for the prior twelve (12) months. The timing of this submittal shall be coordinated with the preparation of the newsletter.

5.5 Employment Opportunities

Job Fairs - Contractor shall continue to conduct in-City job fairs ~~for at least four weekends prior to the start of service~~until all positions are filled, demonstrating a preference for the hiring of City residents and displaced employees of the City's previous Solid Waste contractor.

California Works Alliance - Contractor will partner with the California Works Alliance "Jobs Through Recycling and Resource Management" project to provide internships, providing job training opportunities for at least twelve months following the implementation of service.

5.6 El Rancho School District

Contractor shall donate $25,000 per Rate Year, beginning 2012/13, to the El Rancho School District in coordination with the City of Pico Rivera.

ARTICLE 6

CONTRACTOR COMPENSATION AND RATES

6.1 General

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

6.2 Initial Rates

The maximum rates that Contractor may charge Customers through June 30, 2014, shall not exceed the maximum rates set forth in Exhibit 2; rates shall remain unchanged for the first two Rate Years.

6.3 Schedule of Future Adjustments

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

6.4 Method of Adjustments

Pursuant to Section 6.3, Contractor may request an adjustment to the maximum rates according to the method described below, subject to review and approval of City. All future adjustments are to be effective July 1.

~~The rate adjustment formula included in this section may result in an increase or decrease to rates. Whether or not the Contractor requests a rate adjustment, the City may implement a rate adjustment based upon the calculations in this section. If a rate adjustment would have resulted in a decrease in rates but is not implemented, the next rate adjustment will be based upon the change in indices since the previously implemented adjustment, not for only the previous twelve-month period.~~

Calculate the percentage increase or decrease in the Consumer Price Index for All Urban Consumers, all items index U.S. city average (CUUR0000SA0), measured as the average monthly index for the twelve-month period ended the December prior to the effective date of the rate adjustment versus the average monthly index for the preceding twelve-month period. If this results in a change greater than 5.0%, the change for the relevant year will be 5.0%. If this results in a negative change, the change for the relevant year will be 0% (no change). Index changes above 5% and decreases that are not applied to the rates will not roll forward to future adjustments.

Apply this percentage change to all rates permitted to be charged under this Agreement, including permanent Roll-off Box service per ton rates.

~~[MAY BE ADJUSTED BASED UPON PROPOSAL]~~

6.5 Extraordinary Adjustments

Contractor may request an adjustment to maximum rates in the event of extraordinary changes in the cost of providing service under this Agreement. Extraordinary rate adjustments may be requested no more than once per year. Reasons for such extraordinary rate adjustment requests shall not include changes in Recyclable Material or Green Waste tipping fees or processing costs, changes in the market value of Recyclables from the values assumed in Contractor's Proposal, inaccurate estimates by the Contractor of its proposed cost of operations, unionization of Contractor's work force, or change in wage rates or employee benefits. No extraordinary adjustments will be granted for fuel costs, because the CPI upon which annual rate adjustments to the service component are based includes an energy component. No extraordinary adjustment will be granted for processing costs for holiday trees due to the closure of Puente Hills landfill.

Contractor may request an extraordinary adjustment based upon changes in a direct per ton fee assessed at the Disposal Site by federal, state or local regulatory agencies after

the Effective Date. Extraordinary rate adjustments shall only be effective after approval by City Council and may not be applied retroactively. Contractor will not request extraordinary rate adjustments due to any other Disposal cost increases.

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

City may request a copy of the Contractor's annual financial statements in connection with the City's review of Contractor's rate adjustment request. City shall review the Contractor's request and, in City's sole judgment and absolute, unfettered discretion, make the final determination as to whether an adjustment to the maximum rates will be made, and, if an adjustment is permitted, the appropriate amount of the adjustment. City may consider increases or decreases in the Contractor's total revenues and total cost of services when reviewing an extraordinary rate adjustment request.

ARTICLE 7

REVIEW OF SERVICES AND PERFORMANCE

7.1 Performance Review Meeting

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

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

a) Current Diversion rates and a report on Contractor's outreach activities for the past year.

b) Recommended changes and/or new services to improve City's ability to meet waste diversion goals and to contain costs and minimize impacts on rates. A specific plan for compliance with State diversion goals shall be included.

c) Any specific plans for provision of new or changed services by Contractor.

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

As a result of its findings following any Solid Waste Services and Performance Review Meeting, City may require Contractor to provide expanded or new services within a reasonable time and City may direct or take corrective actions for any performance inadequacies (although nothing contained in this provision should be construed as requiring City to hold a Solid Waste Services and Performance Review Meeting in order to enforce any rights or remedies it has pursuant to the terms hereof.) Should City require expanded or new services as a remedy for Contractor's failure to perform its obligations hereunder, no additional compensation shall be due for such services. Otherwise, any new or expanded services required of Contractor shall be subject to the provisions of Section 2.10.1.

7.2 Performance Satisfaction Survey

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

ARTICLE 8

RECORDS, REPORTS AND INFORMATION REQUIREMENTS

8.1 General

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

8.2 Records

8.2.1 General

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

Contractor agrees that the records of any and all companies conducting operations addressed in the Agreement shall be provided or made available to City and its official representatives during normal business hours. Account histories shall be accessible to the City by computer for a minimum of five (5) years. City may review or utilize any of

the records described in this section. Such records include, but are not limited to, financial, Solid Waste, CERCLA and Disposal records.

8.2.2 Financial Records

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

Contractor shall maintain at least the following records:

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

8.2.3 Solid Waste Records

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

a) Customer services and Billing/City payment records;

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

c) Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with AB 939;

d) Bulky Item and special event tonnages, including tons disposed and diverted;

e) Routes;

f) Facilities, equipment and personnel used;

g) Facilities and equipment operations, maintenance and repair;

h) Number and type of Refuse, Recycling and Green Waste Containers in service;

i) Complaints; and,

j) Missed pickups.

8.2.4 CERCLA Defense and Disposal Records

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

8.2.5 Other Programs' Records

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

a) Plans, tasks, and milestones; and,

b) Accomplishments in terms such as dates, activities conducted and numbers of participants and responses.

8.2.6 Audit

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

Contractor will fund biennial audits. The first hauler-funded audit, to be performed during 2014, will be based on the Contractor's reports and records for calendar year 2013. Hauler-funded audits will be performed every other year thereafter. Contractor will reimburse to the City the cost of such audits (including audits conducted by City staff) up to $50,000 for the first audit, and $30,000 for each subsequent biennial audit in 2014 dollars. The $30,000 amount in subsequent years shall be increased annually by the change in CPI identified in Section 6.4 as the change to the service component.

Should an audit conducted or authorized by the City disclose that fees payable by Contractor were underpaid by two percent (2%) or more, that tonnage was misreported by two percent (2%) or more, or that more than two percent (2%) of the Customers were inaccurately Billed based on the auditor's sampling for the period under review, City may expand the scope of the audit and recover additional audit costs from the Contractor.

8.2.7 Payments and Refunds

Should an audit disclose that fees payable by the Contractor were underpaid or that Customers were overcharged for the period under review, Contractor shall pay to City any underpayment of fees and/or refund to Contractor's Customers or to City, as directed by City, any overcharges within thirty (30) days following the date of the audit. Contractor shall pay interest to the City for any underpayment or overcharges at an annual rate of twelve percent (12%). Undercharges shall not be billed in arrears for more than ninety (90) days of service, with any remaining undercharges absorbed by Contractor. Should an audit disclose that fees were overpaid, City shall credit such amounts against future fees payable by Contractor.

8.3 Reports

8.3.1 Report Formats and Schedule

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

Reports shall be submitted within thirty (30) calendar days after the end of the reporting period. Annual reports for which a date is not otherwise specified in this Agreement shall be submitted within thirty (30) calendar days after the end of the calendar year. If requested, Contractor's complaint summary, described in Section 5.2.2, shall be sent to the City Manager within five (5) business days of request.

All reports shall be submitted to:

City Manager
City of Pico Rivera
6615 Passons Boulevard
Pico Rivera, CA 90660-1016

8.3.2 Monthly Reports

The information listed below shall be the minimum reported:

a) Solid Waste Collected by Contractor, sorted by type of Solid Waste Collected and diverted (Refuse, Recycling, Green Waste and manure) in tons (including contamination and Diversion rates for each waste stream and Customer type), Customer type (Cart, Residential Bin, Commercial Bin and Roll-off Box) and the Facilities where the tons were processed or Disposed.

b) Warning notices issued for contaminated Refuse, Recyclable Materials and Green Waste Containers.

c) Narrative summary of problems encountered and actions taken with recommendations for City, as appropriate.

d) Quantity of Recyclable Materials recovered by material type, as well as quantity of material diverted from landfills in compliance with AB 939, by Customer type (Residential, Bin, Roll-off Box).

e) Description of Contractor outreach activities and copies of promotional and public education materials sent during the month.

f) Other information or reports that City may reasonably request or require.

Note: Monthly fee payment statement due per Section 3.2.2 may be submitted separately, accompanying the fee payment.

8.3.3 Annual Report

The annual report shall include:

a) A summary of the number of Containers in service as of December 31 by size (number of gallons, number of yards), sector (Residential Cart, Commercial Cart, Residential Bin, Commercial Bin and Roll-off Box), service frequency, and type of service (Refuse, Recycling, Green Waste and manure).

b) Records of tons Collected, processed, diverted and disposed by waste stream (Refuse, Recycling, Green Waste and manure), by Customer type (Cart, Residential Bin, Commercial Bin and Roll-off Box).

c) Gross Receipts by sector (Cart, Bin and Roll-off Box).

d) Number of routes and route hours per day by type of service as of December 31.

e) General information about the Contractor and its most recent annual report.

f) Other information or reports that County may reasonably request or require.

8.3.4 Financial Report

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

The financial statements and footnotes shall be prepared in accordance with Generally Accepted Accounting Principles ("GAAP") and reviewed, in accordance with Generally Accepted Auditing Standards ("GAAS"), by a certified public accountant ("CPA") licensed (in good standing) to practice public accounting in the State of California as

determined by the State of California Department of Consumer Affairs Board of Accountancy. The cost of preparation of the financial statements and audit shall be borne by Contractor as a direct cost of service.

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

8.4 Reporting Adverse Information

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

8.5 Right to Inspect Records

City shall have the right to inspect or review the specific documents or records required expressly or by inference pursuant to this Agreement, or any other similar records or reports of Contractor or its Affiliates that City shall deem, in its sole discretion, necessary to evaluate annual reports, and Contractor's performance provided for in this Agreement. Contractor shall make all records and documents to be reviewed and inspected by City as a part of any audit or other record review conducted by City,

available for City's review, inspection and copying within five (5) days of receiving written notice from City requesting the same.

8.6 Failure to Report

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

ARTICLE 9

INDEMNIFICATION, INSURANCE, BOND AND LETTER OF CREDIT

9.1 Indemnification

Contractor hereby agrees to and shall indemnify and hold harmless City, its elected and appointed boards, commissions, officers, employees, consultants and agents (collectively, "Indemnitees") from and against any and all loss, liability, penalty, forfeiture, claim, demand, action, proceeding or suit in law or equity of any and every kind and description (including, but not limited to, injury to and death of any Person and damage to property, or for contribution or indemnity claimed by third parties) arising or resulting from and in any way connected with (1) the negligence or willful misconduct of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement; (2) the failure of Contractor, its officers, employees, agents, contractors and/or subcontractors to comply in all respects with the provisions of this Agreement, applicable laws (including, without limitation, the Environmental Laws), ordinances and regulations, and/or applicable permits and licenses; (3) the acts of Contractor, its officers, employees, agents, contractors and/or subcontractors in performing services under this Agreement for which strict liability is imposed by law (including, without limitation, the Environmental Laws). The foregoing indemnity shall apply regardless of whether such loss, liability, penalty, forfeiture, claim, demand, action, proceeding, suit, injury, death or damage is also caused in part by any of the Indemnitees' negligence, but shall not extend to matters resulting from the Indemnitees' sole negligence, or willful misconduct. Contractor further agrees to and shall, upon demand of City, at Contractor's sole cost and expense, defend (with attorneys acceptable to City) the Indemnitees against any claims, actions, suits in law or equity or other proceedings, whether judicial, quasi-judicial or administrative in nature, arising or resulting from any of the aforementioned events, and to reimburse City for any and all costs and expenses City incurs in providing any such defense, either before, during or after the time Contractor elects to provide such defense, including any and all costs incurred in overseeing any defense to be provided herein by Contractor.

Contractor, upon demand of City, made by and through the City Attorney, shall protect City and appear in and defend the Indemnitees in any claims or actions by third parties,

whether judicial, administrative or otherwise, including, but not limited to disputes and litigation over the definitions of "Solid Waste" or "Recyclable Material," the scope of the rights granted herein, conflicts between the rights granted herein and rights asserted by other Persons, or the limits of City's authority with respect to the grant of licenses, or agreements, exclusive or otherwise, or asserting rights under the United States or California Constitutions or any federal or state law to provide Solid Waste Handling Services in the City.

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

9.2 Hazardous Substances Indemnification

A. Without regard to any insurance coverage or requirements, and without limiting the above general indemnification obligation in any way, Contractor specifically agrees to and shall, to the maximum extent permitted by law, defend (with counsel acceptable to City), reimburse, indemnify, and hold harmless Indemnitees from and against any and all claims, actions, liabilities, damages, demands, judgments, losses, costs, liens, expenses, suits, actions, attorneys' fees, consultant fees, penalties and any and all other losses, damages, fees and expenses of whatever kind or nature ("Claims") (including but not limited to response costs, investigative costs, assessment costs, monitoring costs, treatment costs, cleanup costs, removal costs, remediation costs, and similar costs, damages and expenses) that arise out of, or are alleged to arise out of, or in any way relate to any action, inaction or omission of Contractor that:

1. results in any demand, claim, notice, order, or lawsuit, asserting that any Indemnitee is liable, responsible or in any way obligated to investigate, assess, monitor, study, test, treat, remove, remediate, or otherwise clean up, any Hazardous Contaminant (as defined herein); or

2. relates to material Collected, transported, Recycled, processed, treated or Disposed of by Contractor.

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

1. any Claims brought pursuant to or based on the provisions of any Environmental Law;

2. any Claims based on, or arising out of, or alleged to be arising out of the ownership, use, lease, sale, design, construction, maintenance or operation of Contractor of any Facility;

3. any Claims based on or arising out of or alleged to be arising out of the marketing, sale, distribution, storage, transportation, Disposal, processing or use of any materials recovered by Contractor;

4. any Claims based on or arising out of, or alleged to be arising out of, any breach of any express or implied warranty, representation or covenant arising out of or in connection with this Agreement.

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

D. For purposes of this section, the term "Hazardous Contaminant" shall mean any Hazardous Substance, any Hazardous Waste, any crude oil or refined or unrefined petroleum product or any fraction or derivative thereof; and any asbestos or asbestos-containing material. The term "Hazardous Contaminant" shall also include any and all amendments to any referenced statutory or regulatory provisions made before or after the date of execution of this Agreement.

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

9.3 AB 939 Indemnification and Guarantee

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

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

9.4 Insurance

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

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

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

2. The most recent editions of Insurance Services Office form number CA 00 01 covering Automobile Liability, code 1 "any auto" and endorsement CA 00 25.

3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

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

1. Comprehensive General Liability: Five Million Dollars ($5,000,000) limit aggregate and Five Million Dollars ($5,000,000) limit per occurrence for bodily injury, Personal injury and property damage.

2. Automobile Liability: Five Million Dollars ($5,000,000) limit aggregate and One Million Dollars ($1,000,000) single limit per accident for bodily injury and property damage.

3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California (or provide evidence of State approval to be self-insured).

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

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

1. General Liability and Automobile Liability Coverages

   a) City, its elective and appointive boards, commissions, officials, employees, agents and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor; Premises owned, leased or used by Contractor; or vehicles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, its elective and appointive boards, commissions, officials, employees, agents or volunteers.

   b) Contractor's insurance coverage shall be primary insurance as respects City, its elective and appointive boards, commissions, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by City, its officials, elective and appointive boards, commissions, employees, agents or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

c) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, elective and appointive boards, commissions, employees, agents or volunteers.

d) Coverage shall state that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage - The insurer shall agree to waive all rights of subrogation against City, its officials, elective and appointive boards, commissions, employees, agents and volunteers for losses arising from work performed by Contractor for City.

3. All Coverages - Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to City.

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

F. Verification of Coverage. Contractor shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this clause. Such certificates shall show the type and amount of coverage, effective dates and dates of expiration of policies, and shall have all required endorsements. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by or acceptable to City and are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies at any time.

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

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

H. Required Endorsements

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

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

   City Manager
   City of Pico Rivera
   6615 Passons Boulevard
   Pico Rivera, CA 90660-1016

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

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

      City Manager
      City of Pico Rivera
      6615 Passons Boulevard
      Pico Rivera, CA 90660-1016

   b) "Contractor agrees to endorse the third party general liability coverage required herein to include as additional insureds City of Pico Rivera, its officials, employees and agents, using standard ISO endorsement No. CB 2010 with an edition date of 1985, or equivalent provisions as determined acceptable by the Office of the City Attorney for the City of Pico Rivera in its sole discretion. Contractor also agrees to require all contractors, subcontractors and

anyone else involved in any way with the project contemplated by this agreement, to do likewise."

c) "This policy shall be considered primary insurance as respects any other valid and collectible insurance maintained by City, including any self-insured retention or program of self-insurance, and any other such insurance shall be considered excess insurance only."

d) "Inclusion of City as an insured shall not affect City's rights as respects any claim, demand, suit or judgment brought or recovered against Contractor. This policy shall protect Contractor and City in the same manner as though a separate policy had been issued to each, but this shall not operate to increase Contractor's liability as set forth in the policy beyond the amount shown or to which Contractor would have been liable if only one party had been named as an insured."

I. Other Insurance Requirements

1. In the event any services are delegated to another company or subcontractor, Contractor shall require such company or subcontractor to provide statutory workers' compensation insurance and employer's liability insurance for all of the company's or subcontractor's employees engaged in the work in accordance with this Section 9.4. The liability insurance required by this Section 9.4 shall cover all companies or subcontractors or the companies or subcontractors must furnish evidence of insurance provided by it meeting all of the requirements of this Section 9.4.

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

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

9.5 Faithful Performance Bond

Concurrently with execution of this Agreement, Contractor shall deliver to City a performance bond in the sum of the amount of Two Hundred Fifty Thousand Dollars ($250,000), similar to the form provided in Exhibit 34, which secures the faithful performance of this Agreement, including, without limitation, payment of any penalty and the funding of any work to cure a breach of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his or her power of attorney. The bond may be issued for one year and be annually renewable; Contractor shall be responsible for securing a new (or renewed) bond each year. The surety company can issue an annual bond renewable each year.

9.6 Faithful Performance Letter of Credit

In addition to a corporate surety bond as noted in Section 9.5 above, Contractor shall furnish an irrevocable letter of credit in the amount of Two Hundred Fifty Thousand Dollars ($250,000), from a financial institution acceptable to the City and in a form acceptable to the City Attorney as security for the performance of this Agreement (the "LOC"). The LOC shall be the sole responsibility of Contractor, and shall be released within thirty (30) days after both (i) the expiration of the term of this Agreement, or upon the earlier termination hereof; and (ii) Contractor's satisfactory performance of all obligations hereunder.

9.7 Forfeiture of Performance Bond

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

declaration. Failure to restore the performance bond to its full amount within thirty (30) days shall be a material breach of the Agreement.

9.8 Forfeiture of Letter Of Credit

Thirty (30) days following City providing Contractor with written notice of its failure to pay City any amount owing under this Agreement, the LOC may be drawn upon by City for purposes including, but not limited to:

a. Payment of sums due under the terms of this Agreement which Contractor has failed to timely pay to City; and/or,

b. Reimbursement of costs borne by City to correct violations of this Agreement not corrected by Contractor, including but not limited to the liquidated damages described in Section 11.3.

City may draw upon the entire LOC and convert it to a cash deposit if Contractor fails to cause the LOC to be extended or replaced with another satisfactory letter of credit no later than sixty (60) days prior to its expiration during the term hereof.

9.9 Performance Security Beyond Service Term

Some Agreement requirements extend beyond the Term and other requirements, such as minimum Diversion rates per Section 4.2.7~~6~~, will not be substantiated until after the final service date. Therefore, Contractor shall not terminate the performance bond or letter of credit, and will renew it to ensure continuous availability to the City, until receiving a written release from the City. Any performance bond and letter of credit will automatically expire at the end of twenty-four (24) months after the end of the Term, unless City has notified Contractor in writing as to a specific contractual area of concern yet to be resolved, instructing Contractor to retain bond and letter of credit. Neither permission from the City to discontinue holding this surety, nor permitted expiration after twenty-four (24) months, shall relieve Contractor of payments to the City that may be due, or may become due.

ARTICLE 10

CITY'S RIGHT TO PERFORM SERVICE

10.1 General

In the event that Contractor, for any reason whatsoever, fails, refuses or is unable to Collect, Recycle, process, transport or Dispose of any or all Solid Waste as required by this Agreement, at the time and in the manner provided in this Agreement, for a period of more than forty-eight (48) hours, and if, as a result thereof, Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that such accumulation endangers or menaces the public health, safety or welfare, then City shall have the right, but not the obligation, (1) to perform, or cause to be performed, such services itself with its own or other personnel without liability to Contractor; and/or (2) to take possession of any or all of Contractor's land, equipment and other property used or useful in the Collection and transportation of Solid Waste, and to use such property to Collect and transport any Solid Waste generated within City which Contractor would otherwise be obligated to Collect, transport and properly Dispose of or process pursuant to this Agreement.

Notice of City's determination to effect its rights under this Section may be given orally by telephone to Contractor at its principal office and shall be effective immediately. Written confirmation of such oral notification shall be sent to Contractor within twenty-four (24) hours of the oral notification.

Contractor further agrees that in such event:

A. It will take direction from City to effect the transfer of possession of equipment and property to City for City's use, or for use by any Person or entity designated by the City.

B. It will, if City so requests, keep in good repair and condition all of such equipment and property, provide all motor vehicles with fuel, oil and other service, and provide such other service as may be necessary to maintain said property in operational condition.

C. City may immediately engage all or any personnel necessary or useful for the Collection and transportation of Solid Waste, including, if City so desires, employees

previously or then employed by Contractor. Contractor further agrees, if City so requests, to furnish City the services of any or all management or office personnel employed by Contractor whose services are necessary or useful for Solid Waste Collection, transportation, processing and Disposal operations and for the Billing and Collection of fees for these services.

City agrees that it assumes complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

If the interruption or discontinuance in service is caused by any of the reasons listed in Section 11.4, City shall pay to Contractor the reasonable rental value of the equipment and facilities, possession of which is taken by City, for the period of City's possession, if any, which extends beyond the period of time for which Contractor has rendered Bills in advance of service, for the class of service involved. If the interruption or discontinuance in service is caused by any other reason, regardless of City's implementation of options under this agreement, City may consider this a default.

10.2 Billing and Compensation to City During City's Possession

Contractor agrees that it shall reimburse City for any and all costs and expenses incurred by City beyond revenue Billed and received by City in taking over possession of the above-mentioned equipment and property for Solid Waste service in such manner and to an extent as would otherwise be required of Contractor under the terms of this Agreement. Such reimbursement shall be made from time to time after submission by City to Contractor of each statement listing such costs and expenses, but in no event later than five (5) working days from and after each such submission.

10.3 City's Right to Relinquish Possession

It is further mutually agreed that City may at any time at its discretion relinquish possession of any or all of the above-mentioned property to Contractor and thereupon demand that Contractor resume the Solid Waste Handling Services as provided in this Agreement, whereupon Contractor shall be bound to resume the same.

10.4 City's Possession Not A Taking

It is expressly agreed between the Parties that City's exercise of its rights under this article (1) does not constitute a taking of private property for which compensation must

be paid, (2) shall not create any liability on the part of City to Contractor, and (3) does not exempt Contractor from any of the indemnity and insurance provisions of this Agreement, which are meant to extend to circumstances arising under this section provided that Contractor is not required to indemnify City against claims and damages arising from the sole negligence of City, its elective and appointive boards, commissions, officers, employees and agents in the operation of Collection vehicles during the time City has taken possession of such vehicles.

10.5 Duration of City's Possession

City's right pursuant to this Article to retain temporary possession of Contractor's facilities and equipment, and to render Collection services, shall terminate when City determines that such services can be resumed by Contractor, or when City no longer reasonably requires such property or equipment. In any case, City has no obligation to maintain possession of Contractor's property or equipment and/or continue its use for any period of time and may at any time, in its sole discretion, relinquish possession to Contractor.

ARTICLE 11

DEFAULT, REMEDIES AND LIQUIDATED DAMAGES

11.1 Events of Default

All provisions of the Franchise and this Agreement to be performed by Contractor are considered material. Each of the following shall constitute an event of default by the Contractor.

A. Fraud or Deceit or Misrepresentation. If the Contractor engages in, or attempts to practice, any fraud or deceit upon City or makes a misrepresentation regarding material information to City.

B. Insolvency or Bankruptcy. If Contractor becomes insolvent, unable, or unwilling to pay its debts, files a bankruptcy petition or takes steps to liquidate its assets.

C. Failure to Maintain Coverage. If Contractor fails to provide or maintain in full force and effect the Workers' Compensation, liability, or indemnification coverage as required by this Agreement. (Provided insurance is already secured, Contractor shall be permitted two business days to provide physical documentation to the City demonstrating that the required insurance is in place.)

D. Violations of Regulation. If Contractor violates any orders or filings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of the Franchise and this Agreement shall be deemed to have occurred until a final decision adverse to the Contractor is entered.

E. Failure to Pay. If Contractor fails to make any payments required under this Agreement and/or refuses to provide City, within ten (10) days of the demand, with required information, reports, and/or records in a timely manner as provided for in the Agreement.

F. Failure to Cooperate with Audits. Failure to complete, perform or cooperate with any audit as described by this Agreement.

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

H. Acts or Omissions.

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

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

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

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

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

to labor unrest including strike, work stoppage or slowdown, sick-out, picketing, or other concerted job action if all requirements of Section 11.4 are not met) for two (2) or more consecutive days.

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

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

N. Failure to Meet Section 4.2.76.A Diversion Goal. Failure to meet the minimum recycling requirements identified in Section 4.2.76.A for two (2) consecutive calendar years.

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

11.2 Right to Terminate Upon Default and Right to Specific Performance

If Contractor commits a material breach, including specifically any of the matters listed in subsections A through NQ of Section 11.1 above (and, if permitted to cure, does not cure it within the five day period~~forty-eight (48) hours~~), City shall be entitled to unilaterally terminate this Agreement or impose other such sanctions (which may include financial sanctions, temporary suspensions or any other conditions it deems appropriate short of termination) as it shall deem proper. Should City decide to terminate this Agreement upon a default by Contractor, City shall have the right to do so upon giving ten (10) days notice to Contractor, and shall not be required to take any further action (such as holding any hearing, bringing any suit or taking any other action.)

City's rights to terminate this Agreement and to take possession of Contractor's Facility and/or equipment are not exclusive, and City's termination of this Agreement shall not constitute an election of remedies. Instead, such remedies shall be in addition to any and all other legal and equitable rights and remedies which City may have.

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

11.3 Liquidated Damages

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

B. Service Performance Standards; Liquidated Damages for Failure to Meet Standards. The Parties further acknowledge that consistent, reliable Solid Waste Handling Service is of utmost importance to City and that City has considered and relied on Contractor's representations as to its quality of service commitment in entering this Agreement with it. The Parties further recognize that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. The Parties further recognize that if Contractor fails

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

Contractor	City
Initial Here_____	Initial Here_____

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

1. Collection Reliability

   a) For each failure to commence service to a new Customer account within seven (7) days after order, which exceeds five (5) such failures annually: $50.00

   b) For each failure, which exceeds ten (10) such failures annually, to Collect Solid Waste from any established Customer account on the scheduled Collection day and not make up the Collection within the time allotted per Section 4.6.1.3: $50.00

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

2. Collection Quality

a) For each occurrence of failure to properly return empty Containers to avoid pedestrian or vehicular traffic impediments or to place Containers upright which exceeds ten (10) such occurrences annually: $50.00

b) For each occurrence in violation of the City's noise ordinance or of discourteous behavior which exceeds ten (10) annually: $150.00

c) For each occurrence of Collecting Solid Waste during unauthorized hours which exceeds five (5) such occurrences annually: $150.00

d) For each failure to clean up Solid Waste spilled from Solid Waste Containers within ninety (90) minutes which exceeds ten (10) such failures annually: $150.00

3. Customer Responsiveness

a) For each failure to initially respond to a Customer complaint within one (1) business day, and for each additional day in which the complaint is not addressed, which exceeds five (5) annually: $100.00

b) For each failure to process Customer complaints as required by Article 5, Section 5.2.2, which exceeds five (5) annually: $100.00

c) For each failure to remove graffiti from Containers, or to replace with Containers bearing no graffiti, within twenty-four (24) hours (excepting holidays and weekends) of request from City or Customer: $ 50.00 per day

d) For each failure to repair or replace a damaged or missing Container within three (3) business days of request from City or Customer: $ 50.00 per day

e) For each failure to process a claim for damages within thirty (30) days from the date submitted to Contractor: $100.00

f) For each additional thirty (30) day increment of time in which Contractor has failed to resolve a claim for damages within thirty (30) days from the claim date: $100.00

4. Diversion Efforts

a) For each calendar year in which Contractor fails to provide support to the City within thirty (30) days of year-end, documenting that it diverted at least the minimum tonnage required by Section 4.2.76.A under this Agreement: $5025 for each ton below tonnage level necessary to meet Diversion goal

b) For every Recycling or Green Waste Cart Collected as Refuse without issuing a red tag per Section 4.2.54: $50 per Cart

5. Timeliness of Submissions to City

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

i) Monthly Reports: $50 per day

ii) Annual Reports: $100 per day

6. Accuracy of Billing

Each Customer invoice that is not prepared in accordance with the City's approved rate schedule, or includes charges not identified on the City-approved rate schedule or otherwise approved in writing by the City, in excess of ten (10) invoices annually, and that are not accurately corrected in the next Billing run: $25 per invoice, not to exceed $2,500 per Billing run

7. Cooperation with Service Provider Transition

a) For each day routing information requested by City Manager in accordance with Section 12.8 is received after City-established due dates, both for preparation of a request for proposals and for new service provider's implementation of service : $1,000/day

b) For each day delivery of keys, access codes, remote controls, or other means of access to Solid Waste Containers is delayed beyond one (1) day prior to

new service provider servicing Customers with access issues, as described in Section 12.8: $1,000/day

c) For delay in not meeting the requirements contained in Sections 4.11 and 12.8 in a timely manner, in addition to the daily liquidated damages for breach under 7(a) and 7(b) above, liquidated damages of: $10,000

8. Replacement of ~~Residential Cart~~ Collection Vehicles

For each Collection Vehicle that does not use not use exclusively LNG or CNG fuel in accordance with Section 4.6.2(B), for each year vehicle is non-compliant. For example, if 3 vehicles in use do not use LNG or CNG before July 2013 (within 12 months of the start of service under the Agreement), and are not replaced until July 2015, damages would be 3 trucks x $25,000 per truck x 2 years = $150,000. Damages may be pro-rated to reflect partial years.):

$25,000 per vehicle per year

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

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

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

D. Timing of Payment. Contractor shall pay any liquidated damages assessed by City Manager within ten (10) days after they are assessed. If they are not paid within

the ten (10) day period, City may proceed against the performance bond required by the Agreement or find Contractor in default and terminate this Agreement pursuant to Section 11.2, or both.

11.4 Excuse from Performance

11.4.1 Force Majeure

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

11.4.2 Labor Unrest

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

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

2) Notify City Manager sixty (60) days prior to the expiration of its drivers' labor agreement.

3) Meet the requirements agreed to in the contingency plan.

4) Meet requirements of 11.4.3 below.

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

11.4.3 Procedures In Event of Excused Performance

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

1) Provide City with a minimum of daily service updates.

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

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

11.5 Notice, Hearing and Appeal of City Breach

(A) Administrative Hearing. Should Contractor contend that City is in breach of any aspect of this Agreement, it shall give notice to the City Manager requesting an administrative hearing on the allegation. A hearing officer shall be appointed by the City Manager, and the hearing shall occur as soon as reasonably possible, or on such date as mutually agreed by the City Manager. The hearing officer shall make an advisory ruling on Contractor's allegations, and suggest a remedy if a breach by City is determined to exist. The hearing officer's ruling shall be advisory only.

(B) Other Remedies; Claims. Contractor shall be entitled to all available remedies in law or equity for City's breach of this Agreement; provided, however, Contractor shall not file or otherwise commence any action against City, in law or equity, in any court, until after an administrative hearing as set forth above has been completed, and a thirty (30) day period to accept the hearing officer's decision has passed, or either City or Contractor has given timely written notice to the other that it will not accept the hearing officers decision.

(C) Actions for Damages. As a prerequisite to the filing and maintenance of any action for damages by Contractor against City arising out of this Agreement, Contractor shall present a claim to City, as required by Government Code section 910 et seq, within thirty (30) days of the date of the occurrence giving rise to the claim for damages.

11.6 Assurance of Performance

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

ARTICLE 12

OTHER AGREEMENTS OF THE PARTIES

12.1 Relationship of Parties

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

12.2 Compliance with Law

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

12.3 Governing Law

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

12.4 Jurisdiction

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

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

12.5 Assignment

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

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

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

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

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

a) Contractor shall pay City its reasonable expenses for attorney's fees and investigation costs necessary to investigate the suitability of any proposed assignee, and to review and finalize any documentation required as a condition for approving any such assignment. An advance payment towards expenses may be requested by City prior to City consideration of any assignment request and Contractor shall be responsible to pay all costs incurred by City in considering a request for assignment, including those in excess of the aforesaid deposit amount, regardless of whether City consents to the assignment.

b) Contractor shall pay a transfer fee to the City equal to one percent (1%) of the annual revenue for the most recent twelve (12) months prior to the effective date of the change of ownership, multiplied by the number of remaining years, or fraction thereof, under this Agreement. Notwithstanding the above, payment of a transfer fee will not be required in the event of an assignment to an Affiliate of Contractor;

c) Contractor shall furnish City with audited financial statements for itself, and the proposed assignee's operations for the immediately preceding three (3) operating years. (This requirement shall not be required of an Affiliate.)

d) Contractor shall furnish City with a pro-forma financial statement (income statement and balance sheet) for the proposed assignee with the projected results of operations assuming that the assignment is completed. Such pro-forma financial statement shall reflect any debt to be incurred by the assignee as part of the acquisition of Contractor's operations. (This requirement shall not be required of an Affiliate.)

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

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

12.6 Contracting or Subcontracting

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

12.7 Binding on Assigns

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

12.8 Cooperation in Preparation for Termination or Expiration of Contract

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

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

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

12.9 Parties in Interest

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

12.10 Waiver

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

12.11 Contractor's Investigation

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

12.12 Condemnation

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

12.13 Notice

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

If to City:

City Manager
City of Pico Rivera
6615 Passons Boulevard
Pico Rivera, CA 90660-1016

If to Contractor: General Manager
NASA Services, Inc.
1701 Gage Road
Montebello, CA 90640

The address to which communications may be delivered may be changed from time to time by a written notice given in accordance with this section.

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

12.14 Representatives of the Parties

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

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

12.15 City Free to Negotiate with Third Parties

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

12.16 Compliance with Municipal Code

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

12.17 Privacy

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

12.18 Proprietary Information, Public Records

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

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 Entire Agreement

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

13.2 Section Headings

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

13.3 References to Laws and Other Agreements

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

13.4 Interpretation

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

13.5 Agreement

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

13.6 Severability

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

13.7 Exhibits

Each of Exhibits identified as Exhibit "1" through "5~~7~~" is attached hereto and incorporated herein and made a part hereof by this reference.

13.8 Attorneys' Fees

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable attorney's fees and costs. Attorneys' fees shall include attorney's fees on any appeal, and in addition a Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

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

CITY OF PICO RIVERA

("City")

DATED: _____
CITY OF PICO RIVERA

By: _____
Bob J. Archuleta ~~[Name]~~
Mayor

DATED: _____
NASA Services Inc. ~~[Contractor]~~

By: _____
[Name]
[Title]

Approved as to form:

By: _____
Arnold Alvarez-Glasman ~~[Name]~~
City Attorney

By: _____
[Name]
[Title]

ATTEST:

_____
Ronald Bates ~~[Name]~~
City Manager/City Clerk

EXHIBIT 1

CONTRACTOR'S PROPOSAL

EXHIBIT 2
INITIAL MAXIMUM RATES

Following are the rates for July 1, 2012 through June 30, 2014:

Residential Cart Service	Rate*
Cart Service – one each refuse, recycling, and green waste cart	$15.50
Additional Refuse Cart	$6.75
Additional Recycling Cart	$0
Additional Green Waste Cart (above two)	$4.00
Additional Special Overage Pickup for Automated Cart Customers (in excess of two pickups per year)	$5.00
Additional Bulky Item pickups (in excess of 10 annual free pickups for Residential Cart Customers, and 1 annual pickup per unit for Residential Bin Customers)	$25.00
Returned Check ("NSF") Fee (applicable to all customers)	$25.00
Credit Card Declined Fee (applicable to all customers)	$25.00

*Including all fees retained by, or paid to, City. These rates to be adjusted by change in cart rates.

EXHIBIT 2
INITIAL MAXIMUM RATES (continued)

Following are the rates for July 1, 2012 through June 30, 2014:

Monthly Bin Rates*							
Container Size	Pickups per week						
	1	2	3	4	5	6	Extra Empty**
Refuse							
96-gallon cart	$27.47						$8.83
1 yard bin	$49.05	$80.44	$115.76	$145.19	$171.68	$211.90	$33.35
1.5 yard bin	$56.90	$99.08	$136.36	$184.43	$241.33	$284.49	$38.26
2 yard bin	$67.69	$118.70	$170.69	$217.78	$306.07	$359.05	$39.24
2 yard compactor	$120.66	$213.86	$307.05	$392.40	$551.32	$646.48	$69.65
3 yard bin	$98.10	$176.58	$252.12	$324.71	$402.21	$476.77	$45.13
3 yard compactor	$176.58	$316.86	$453.22	$583.70	$724.96	$859.36	$80.44
4 yard bin	$126.55	$231.52	$329.62	$427.72	$529.74	$627.84	$50.03
4 yard compactor	$228.57	$415.94	$594.49	$770.09	$954.51	$1,130.11	$91.23
6 yard bin	$145.19	$260.95	$373.76	$480.69	$596.45	$707.30	$112.82
Recycling– ~~3 yard bin~~							
96~~65~~-gallon cart***	$10.79						
3 yard bin	$39.24	$70.63	$101.04	$129.49	$160.88	$191.30	$17.66
Manure - 2 yard bin	$80.44	$155.98	$231.52	$308.03	$383.57	$459.11	$47.09
Food Waste							
1.5 yard bin	$50.00						
3 yard bin	$60.00						
Locking Bin Service	$13.73	$21.58	$29.43	$37.28	$45.13	$52.97	$6.87
Scout Truck	$25.51	$51.01	$76.52	$102.02	$127.53	$152.06	$25.51

*Including all fees retained by, or paid to, City. These rates to be adjusted by change in bin rates

** Extra empties for locking bins may be charged an extra $5.00 in addition to these rates for each additional tip.

*** Multi-family customers may receive recyclables collection using 96-gallon recycling carts at no additional charge.

EXHIBIT 2
INITIAL MAXIMUM RATES (continued)

Following are the rates for July 1, 2012 through June 30, 2014:

Additional Service Charges	Rate Per Service*
Commercial Bulky Item Pickup:	
- First item	$17.85
- Each additional item on same pickup	$10.04
Bin Return Trip/Dry Run Fee	$75.00
Bin Re-delivery Fee (if bins are pulled for non-payment)	$65.00
Bin Cleaning (over once per year)	$40.00
One-Time Scout Vehicle Usage for Over-Weight Bin – Applicable on a per-tip basis, if a bin that is typically serviced without scout service is too heavy to move without the use of a scout vehicle due to disposal of unusually heavy solid waste material.	$15 per tip
3-yard Temporary Bin	
- Per dump (delivery, disposal and 7-day rental included)	$110.00
- Rental per day after 7 days without a dump	$5.00
Emergency Service Rates – one crew and one collection truck	$85.00

*Including all fees retained by, or paid to, City. These rates to be adjusted by change in bin rates

EXHIBIT 2
INITIAL MAXIMUM RATES (continued)

Following are the rates for July 1, 2012 through June 30, 2014:

Roll-off Box Charges	Rate*
Permanent Roll-off Box Service	
Standard Roll-off Box - Rate per pull (including delivery, and rental)	
- Standard roll-off box (40-yard)	$175.00
- Low-boy roll-off box	$175.00
Compactor Roll-off Box - Rate per pull (excluding compactor rental)	$225.00
Per Ton Rates For Permanent Roll-Off Boxes	
- Refuse	$48.00
- Green Waste	$39.00
- Mixed Construction and Demolition Debris	$48.00
Temporary Roll-off Box Service	
Standard Roll-off Box - Rate per pull (including delivery, 7-day rental and disposal up to six tons)	
- Standard roll-off box (40-yard)	$495.00
- Low-boy roll-off box	$450.00
- Per day rental after 7 days without a pull	$35.00
Per Ton Rates For Temporary Roll-Off Boxes - for each ton over six tons/load	~~Applicable permanent roll-off per ton rate~~
- Refuse	$48.00
- Green Waste	$39.00
- Mixed Construction and Demolition Debris	$48.00
Additional Roll-off Box Fees	
~~- Overweight charge (per ton over ten tons/load)~~	~~———~~
- Dry Run/Redelivery/Return Trip/Relocation Fee	$75.00
- Weight Ticket Copy Fee	$2.50

*Including all fees retained by, or paid to, City. These rates to be adjusted by change in roll-off rates.

~~EXHIBIT 3~~

~~CORPORATE GUARANTY~~

~~THIS GUARANTY (the "Guaranty) is given as of the ____ day of ____, 2012.~~

~~THIS GUARANTY is made with reference to the following facts and circumstances:~~

~~A. _____, hereinafter ("Owner") is a corporation organized under the laws of the State of California, all of the issued and outstanding stock of which is owned by _____, (Guarantor).~~

~~B. Owner and the City of Pico Rivera ("the City") have negotiated an Agreement for Integrated Solid Waste Management Services dated as of _____, (hereinafter "Agreement"). A copy of this Agreement is attached hereto.~~

~~C. It is a requirement of the Agreement, and a condition to the City entering into the Agreement, that Guarantor guaranty Owner'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 hereby irrevocably and unconditionally guarantees to the City the complete and timely performance, satisfaction and observation by Owner of each and every term and condition of the Agreement which Owner is required to perform, satisfy or observe. In the event that Owner fails to perform, satisfy or observe any of the terms and conditions of the Agreement, Guarantor will promptly and fully perform, or cause to perform them in the place of the Owner or cause them to be performed, satisfied or observed. Guarantor hereby guarantees payment to the City of any damages, costs or expenses which might become recoverable by the City from Owner due to its breach of the Agreement.~~

~~2. **Guarantor's Obligations Are Absolute**. The obligations of the Guarantor hereunder are direct, immediate, absolute, continuing, unconditional and unlimited, and with respect to any payment obligation of Owner under the Agreement, shall constitute a guarantee of payment and not of collection, and are not conditional upon the genuineness, validity, regularity or enforceability of the Agreement. In any action brought against the Guarantor to enforce, or for damages for breach of, its obligations~~

~~hereunder, the Guarantor shall be entitled to all defenses, if any, that would be available to the Owner 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**. Except as provided herein the Guarantor shall have no right to terminate this Guaranty or to be released, relieved, exonerated or discharged from its obligations under it for any reason whatsoever, including, without limitation: (1) the insolvency, bankruptcy, reorganization or cessation of existence of the Owner; (2) 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; (3) 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 Owner; or (4) any merger or consolidation of the Owner with any other corporation, or any sale, lease or transfer of any or all the assets of the Owner. Without limiting the generality of the foregoing, Guarantor hereby waives the rights and benefits under California Civil Code Section 2819.~~

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

~~The Guarantor hereby 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 hereunder are paid or performed, Guarantor's obligations hereunder shall 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 Owner 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 shall continue in full force and effect until all of the terms and conditions of the Agreement have been fully performed or otherwise discharged and Guarantor shall 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 Owner's obligations under the Agreement. Guarantor shall not be released of its obligations hereunder so long as there is any claim by the City against Owner arising out of the Agreement based on Owner's failure to perform which has not been settled or discharged.~~

~~5. **No Waivers**. No delay on the part of the City in exercising any rights under this Guaranty or failure to exercise such rights shall operate as a waiver of such rights. No notice to or demand on Guarantor shall 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 shall be effective unless it is in writing and signed by the City and by Guarantor, nor shall any waiver be effective except in the specific instance or matter for which it is given.~~

~~6. **Attorney's Fees**. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees in the event of Guaranty's breach of its obligations including to pay reasonable attorney's fees and all other reasonable costs and expenses incurred by the City in enforcing this Guaranty, or 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 hereunder.~~

~~7. **Governing Law; Jurisdiction**. This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of California and shall 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 such courts. Guarantor appoints the following Person as its agent for service of process in California:~~

_____
_____
_____
_____

~~With a copy by certified mail to:~~

_____
_____
_____
_____

~~8. **Severability**. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity will have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect.~~

~~9. **Binding On Successors**. This Guaranty shall inure to the benefit of the City and its successors and shall be binding upon Guarantor and its successors, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency.~~

~~10. **Authority**. Guarantor represents and warrants that it has the corporate power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its Article of Incorporation and By-Laws, and that the Person signing this Guaranty on its behalf has the authority to do so.~~

~~11. **Notices**. Notice shall 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 Pico Rivera~~
~~6650 Passons Boulevard~~
~~Pico Rivera, CA 90660-1016~~

~~with a copy to the City Counsel at the same address.~~

~~To the Guarantor:~~ _____
_____
_____

~~By:~~ _____
~~(title)~~

~~By:~~ _____
~~(title)~~

EXHIBIT 34

Contractor's Faithful Performance Bond

KNOW ALL MEN BY THESE PRESENTS:

That _____, a California _____, as PRINCIPAL, and _____ _____, a Corporation organized and doing business by virtue of the laws of the State of California, and duly licensed for the purpose of making, guaranteeing, or becoming sole surety upon bonds or undertakings required or authorized by the laws of the State of California, as SURETY, are held and firmly bound to City, hereinafter called OBLIGEE, in the penal sum of two hundred fifty thousand dollars ($250,000) lawful money of the United States, for the payment of which, well and truly to be made, we and each of us hereby bind ourselves, and our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

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

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

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

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

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

IN WITNESS WHEREOF, said PRINCIPAL and said SURETY have caused these presents to be duly signed and sealed this _____day of _____, 2012.

_____	_____
a California Corporation	SURETY
By:_____	By:_____
(PRINCIPAL)	(ATTORNEY IN FACT)
(SEAL)	(SEAL)

EXHIBIT ~~4~~5
STREET SWEEPING ROUTING - OCTOBER 2011

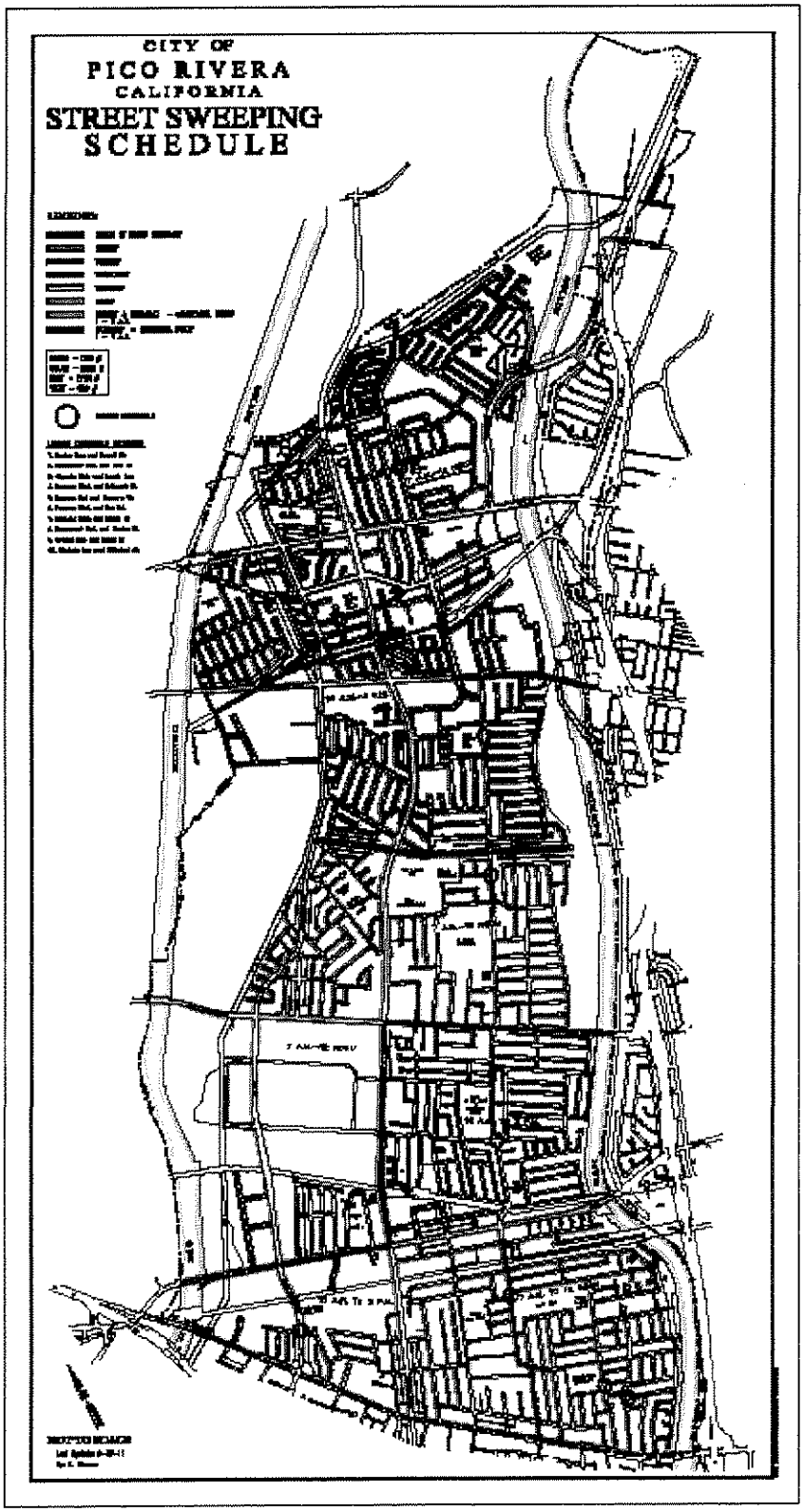

EXHIBIT 6

NOTARY CERTIFICATION

STATE OF CALIFORNIA)

COUNTY OF _____) ss:

On _____, _____, before me, the undersigned, a Notary Public in and for the State of California, personally appeared _____ _____, known to me to be the _____ _____ of Contractor that executed the within instrument on behalf of the Contractor therein named, and acknowledged to me that such Contractor executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of _____ this _____ day of _____, _____.

_____

Notary Public

My Commission Expires:

_____