

**EXCLUSIVE FRANCHISE AGREEMENT**

**FOR COMPREHENSIVE SOLID WASTE SERVICES**

**BETWEEN**

**THE CITY OF BELL**

**AND**

**CONSOLIDATED DISPOSAL SERVICE (CDS)**

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**EXCLUSIVE FRANCHISE AGREEMENT  
FOR COMPREHENSIVE SOLID WASTE SERVICES**

THIS AGREEMENT is made and entered into effective the \_\_\_\_\_ 2012, by and between the CITY OF BELL, a municipal corporation, hereinafter referred to as City, and Consolidated Disposal Service, LLC (CDS), a Delaware Limited Liability Company hereinafter referred to as Franchisee. City and Franchisee agree each with the other, that a period of seven (7) years from and after July 1, 2012, is the established term of this Agreement. Franchisee shall have sole right to collect, haul, and dispose of all solid waste and conduct a comprehensive recycling program in the City, through June 30, 2019, in accordance with the following terms and conditions. This exclusive franchise may be extended for up to three additional one (1) year terms at the mutual consent of the City and the Franchisee.

**RECITALS**

**WHEREAS**, Article XI, § 7 of the California Constitution authorizes cities to protect public health and safety by taking measures in furtherance of their authority over police and sanitary matters; and

**WHEREAS**, as further described below, due to the importance of solid waste collection and disposal as an essential municipal service; the complicated regulatory and legal framework governing it; and the need for an integrated waste management system which disposes of waste in a healthful and economic fashion, reduces waste generation and promotes reuse and recycling, limits the potential for waste to degrade water sources or contaminate the environment, City finds it necessary to award an exclusive franchise to a single franchisee; and for such privilege, and in consideration of Franchisee's obligations hereunder, City shall collect a franchise fee as provided herein; and

**WHEREAS**, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989, ("AB 939" or the "Act") established a Solid Waste management process which requires cities and other local jurisdictions to implement plans for source reduction, reuse and recycling as integrated waste management practices for Solid Waste attributed to sources within their respective jurisdictions; and

**WHEREAS**, California Public Resources Code § 40059 provides that aspects of Solid Waste handling of local concern include but are not limited to frequency of collection, means of collection and transportation, level of services, charges and fees, and nature, location and extent of providing solid waste services, and whether the services are to be provided by means of nonexclusive, partially exclusive or wholly exclusive franchise, contract, license or otherwise which may be granted by local government under terms and conditions prescribed by the governing body of the local agency; and

**WHEREAS**, the Federal Clean Water Act of 1972 establishes water quality standards for all contaminants in surface waters, requires the implementation of wastewater pollution control programs, and at Section 402 thereof, authorizes the National Pollutant Discharge Elimination

System (“NPDES”) permit system to control, by regulations issued at 40 CFR § 122.1 et seq., water pollution by regulating point sources that discharge pollutants into waters of the United States, which stormwater programs are administered regionally through rules, regulations and mandates promulgated by the Los Angeles Regional Water Quality Control Board; and

**WHEREAS**, City is obligated to protect the public health and safety of the residents and businesses in the City, and arrangements made by solid waste enterprises and recyclers for the collection of Residential and commercial Solid Wastes should be made in a manner consistent with the exercise of the City’s police power for the protection of public health and safety; and

**WHEREAS**, City and Franchisee are mindful of the provisions of the laws governing the safe collection, transport, recycling and disposal of Residential and commercial Solid Waste, including AB 939, the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 et seq., the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601 et seq.; the Electronic Waste Recycling Act of 2003 (SB 20, Chapter 526, Statutes of 2003; SB 50, Chapter 863, Statutes of 2004; AB 575 Chapter 59, Statutes of 2011), laws governing Universal Waste, including, but not limited to, Universal Waste Electronics Devices (“UWED”), non-empty aerosol cans, fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and any other lamp exhibiting a characteristic of a hazardous waste, batteries (rechargeable nickel-cadmium batteries, silver button batteries, mercury batteries, small sealed lead acid batteries, alkaline batteries, carbon-zinc batteries and any other batteries which exhibit the characteristic of a hazardous waste), mercury thermometers, mercury-containing switches; and

**WHEREAS**, City and Franchisee desire to make it clear hereunder as to their respective roles that by entering into this Agreement, City is not thereby becoming a “generator” or an “arranger” as those terms are used in the context of CERCLA § 107(a)(3) and that it is the Franchisee, an independent entity, not City, which will arrange to collect Solid Waste from single family dwellings, multiple family dwellings, City and Commercial customers in the City, transport for recycling and disposal and dispose of Solid Wastes which may contain small amounts of household products with the characteristics of hazardous wastes, collect and compost Green Waste and collect and recycle Recyclable Materials from single family dwellings, multiple family dwellings, City, and commercial customers in the City of Bell, and collect and recycle or dispose of Construction and Demolition Materials; and

**WHEREAS**, City and Franchisee agree that, subject to City’s exercise of its reserved flow control right under of this Agreement, the Franchisee will only utilize landfill or transformation facility destinations for the non-recyclable residential and commercial Solid Waste and Construction and Demolition Materials which Franchisee will arrange to collect, that City’s Chief Administrative Officer has approved in writing. The Franchisee is free at all times to petition the City for the inclusion or addition of any lawfully permitted facility and nothing in this Agreement or other action of the City shall be construed to give rise to any inference that the City has any title, ownership or right of possession of such Solid Waste; and

**WHEREAS**, Franchisee represents and warrants to City that Franchisee has the experience and qualifications to conduct recycling and waste diversion programs, to provide City with information sufficient to meet the City’s reporting requirements to CalRecycle and any

other State, County, or additional agencies with jurisdiction over the portion of the City's waste stream that is collected by the Franchisee, and that Franchisee shall submit any such data required by the City to meet its reporting obligations in a format approved by the City; and

**WHEREAS**, Franchisee represents that it employs qualified persons responsible for the day-to-day collection, safe transport, and disposal of Solid Wastes and that such persons will operate equipment and otherwise conduct all activities in a safe manner which shall minimize the adverse effects of collection vehicles on air quality and traffic, and that Franchisee has the ability to indemnify City in accordance with this Agreement; and

**WHEREAS**, the City Council finds and determines pursuant to California Public Resources Code § 40059(a)(1) that the public interest, health, safety and well-being, including the minimization of adverse impacts on air quality and traffic from excessive numbers of collection vehicles, the implementation of measures consistent with the City's Source Reduction and Recycling Element, would be served if Franchisee were to be awarded an exclusive Franchise for collection, recycling, diversion and disposal of Solid Waste from customers in the City,

**NOW THEREFORE**, in consideration of the promises and covenants contained herein, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## **ARTICLE I DEFINITIONS; DELEGATION OF AUTHORITY.**

**1.1 General.** Whenever any term used in this Agreement has been defined by the provisions of Chapter 8.24 of the Municipal Code or by Division 30, Part I of the California Public Resources Code, the definitions in the Municipal Code or the Public Resources Code shall apply unless the term is otherwise defined in this Agreement, in which case this Agreement shall control.

**1.2 Definitions.** Except as provided in Section 1.1, 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 respective meanings:

**1.2.1 AB 939.** "AB 939" means the California Integrated Waste Management Act of 1989, Public Resources Code Section 40000 *et seq.* and regulations promulgated thereunder, as amended from time, to time.

**1.2.2 AB 939 Program Fee.** "AB 939 Program Fee" shall mean that annual fee established by the City and collected from the Franchisee to fund the administrative and related costs of the City for compliance with the Waste Diversion mandates of the State, which fee shall be in the amount of one percent (1%) of Franchisee's Gross Receipts and is further described in Section 3.6.

**1.2.3 Agreed Upon Procedure.** "Agreed Upon Procedure" shall mean the procedures and methodology approved by the City's Chief Administrative Officer for review and audit of Franchisee's financial records in connection with this Agreement.

1.2.4 Agreement. "Agreement" means this Agreement for Provision of Comprehensive Solid Waste Services.

1.2.5 Bin. "Bin" means any Solid Waste container of a capacity exceeding 100 gallons (i.e., a "dumpster") and provided to customers by Franchisee.

1.2.6 Bulky Waste. "Bulky Waste" means any large or small household appliance, electronic waste, universal waste, furniture, tires, carpet, mattress or similar large item discarded as Municipal Solid Waste from a Single-Family Residential Unit or Multi-Family Residential Unit.

1.2.7 Cart. "Cart" means any molded Container provided by City or Franchisee of a size not to exceed 100 gallons with two or more wheels for easy carting by an individual.

1.2.8 Chief Administrative Officer. "Chief Administrative Officer" means the Manager of the City or his or her designee(s).

1.2.9 City. "City" means the City of Bell, a municipal corporation organized under the laws of the State of California, and all of the territory lying within the municipal boundaries of the City as presently existing and, subject to the provisions of Section 3.1.3, all geographic areas which may be added or annexed thereto during the Term of this Agreement.

1.2.10 City Facility. "City Facility" means any building, park or other site owned, leased or used by the City.

1.2.11 Commercial and Industrial Units. "Commercial and Industrial Units" shall mean the Premises of a business that is not a City Facility, Single-Family Residential Unit or Multi-Family Residential Unit.

1.2.12 Compensation Schedule. "Compensation Schedule" shall mean that set of prices established by the City to compensate the Franchisee for the full costs of the collection, processing, recycling, composting, and/or transformation or landfill disposal of solid wastes, inclusive of all City fees and program costs.

1.2.13 Construction and Demolition Debris. "Construction and Demolition Material" or "C&D Material," means any combination of building materials and Solid Waste resulting from construction, remodeling, repair, cleanup, or demolition operations as defined in California Code of Regulations, Title 22 Section 66261.3 *et seq.* This term includes, but is not limited to, asphalt, concrete, Portland cement concrete, brick, lumber, gypsum wallboard, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting; plastic pipe and steel. The material may be commingled with rock, soil, tree stumps; and other vegetative matter resulting from land clearing and landscaping for construction or land development projects.

1.2.14 Contract Year. "Contract Year" means each annual period starting from the Effective Date and recurring thereafter from the Effective Date's anniversary.

1.2.15 County. "County" means the County of Los Angeles.

1.2.16 Curbside Recycling Fee. "Curbside Recycling Fee" shall mean that percentage of shared revenue, Gross Receipts, or other compensation from the sale, barter, or otherwise obtained by Franchisee due to the Franchisee's status as operator of the City of Bell's curbside recycling program, paid to the City on a schedule established herein.

1.2.17 Day. "Day" means calendar day, unless otherwise stated in this Agreement.

1.2.18 Disposal Fee. "Disposal Fee" means those costs imposed at the Disposal Site for the handling or dumping of Solid Waste collected by Franchisee.

1.2.19 Disposal Site. "Disposal Site" means a permitted Solid Waste facility, transfer station, Material Recovery Facility or pre-processing facility.

1.2.20 Effective Date. The term "Effective Date" means the date established herein for closing, which date shall be entered on the first page hereof. To this end, the Parties shall arrange a closing within thirty (30) business days after this Agreement has been approved, at which closing the Parties shall personally meet for the execution and delivery of all documents and delivery of the Fee Payment as defined in Section 4.2 herein. The date that this Agreement shall be considered to be validly approved and in effect will be deemed to be the date of the Closing; should the Closing not be held within said thirty (30) days, or should delivery of all documents and Fee Payment not be timely completed, this Agreement shall be void ab initio and of no force or effect. Notwithstanding the validity of this Agreement from Closing, services under this Agreement shall not commence until the Franchise Start Date, nor shall the term commence until said date.

1.2.21 Franchisee. "Franchisee" means Consolidated Disposal Service.

1.2.22 Franchise Documents. "Franchise Documents" means Chapter 8.24 as the same exists or may be amended in the future of the Municipal Code of the City of Bell, this Agreement, and any exhibits hereto.

1.2.23 Franchise Fee. "Franchise Fee" shall mean an amount paid monthly to City equal to Ten Percent (10%) of Gross Receipts collected during the preceding month for any franchise service, or related service, provided under this Agreement. The term Gross Receipts is defined below and by "gross" means all revenues of any nature whatsoever and is not subject to any percentage reduction or "net-of-fees" computation without the express approval of the City Council.

1.2.24 Franchise Start Date. The date on which the exclusive franchise granted by the Agreement commences to start, which date shall be midnight of July 1, 2012. The Franchise Start Date will commence on July 1, 2012 regardless of the date of the Effective Date of this Agreement.

1.2.25 Franchise Term. The term of the exclusive franchise granted to Franchisee by this Agreement, which Franchise Term shall commence on the Franchise Start Date (July 1, 2012) and continue until June 30, 2019, and may be increased by three additional one-year terms by mutual consent of the Parties.

1.2.26 Green Waste. "Green Waste" means any and all forms of biodegradable plant material which can be placed in a covered Container, such as wastes generated from the maintenance or alteration of public, commercial or residential landscapes including, but not limited to, yard clippings, leaves, tree trimmings, prunings, brush, and weeds as well as green waste. Tree stumps and limbs greater than three (3) inches in diameter are excluded unless they are reduced to a chipped form; otherwise, such large portions of Green Waste shall be considered Bulky Waste.

1.2.27 Gross Receipts. "Gross Receipts" means all monies, consideration and revenue received by Franchisee in connection with the services carried out under this Agreement, whether for residential or commercial services, all revenues from special services or pickups, and any monies received by Franchisee of any kind whatsoever in the operation of this Franchise, and shall include all Tipping Fees or other fees and/or taxes charged to and collected by Franchisee and thereafter passed-on to Franchisee's customers under this Agreement. Notwithstanding the foregoing, Recycling Revenues are not included in Gross Receipts in accordance with Section 6.7.5.

1.2.28 Hazardous Waste. "Hazardous Waste" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is: (i) petroleum or oil or gas or any direct or derivate product or byproduct thereof; (ii) defined as a "hazardous waste," "extremely hazardous waste" or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (iii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iv) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Sections 25501(j) and (k) and 25501.1 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (v) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (vi) "used oil" as defined under Section 25250.1 of the California Health and Safety Code; (vii) asbestos; (viii) listed under Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, or defined as hazardous or extremely hazardous pursuant to Chapter 10 of Division 4.5 of Title 22 of the California Code of Regulations; (ix) defined as waste or a hazardous substance pursuant to the Porter-Cologne Act, Section 13050 of the California Water Code; (x) designated as a "toxic pollutant" pursuant to the Federal Water Pollution Control Act, 33 U.S.C. Section 1317; (xi) defined as a "hazardous waste" pursuant to the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, *et seq.* (42 U.S.C. § 6903); (xii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.* (42 U.S.C. § 9601); (xiii) defined as "Hazardous Material" pursuant to the Hazardous Materials

Transportation Act, 49 U.S.C. Section 5101, *et seq.*; or (xiv) defined as such or regulated by any "Superfund" or "Superlien" law, or any other Federal, State or local law, statute, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning Hazardous Materials and/or oil wells and/or underground storage tanks and/or pipelines, as now, or at any time hereafter, in effect.

1.2.29 Hazardous Waste Program Fee. "Hazardous Waste Program Fee" shall mean that annual fee established by the City and collected from the Franchisee to fund programs established by City pursuant to the Federal Clean Water Act of 1987, program related to responsible HHW management, program related to responsible medical waste management, and the general administrative and reporting costs of the City related to compliance hereto.

1.2.30 Holiday. "Holiday" means holidays prescribed by the City of Bell specific to Franchisee service. These prescribed holidays include: New Year's Day, Labor Day, Veteran's Day, Memorial Day, Thanksgiving Day, Independence Day, Christmas.

1.2.31 Household Hazardous Waste or HHW. "Household Hazardous Waste" or "HHW" shall mean that waste resulting from products purchased by the general public for household use which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may pose a substantial known or potential hazard to human health or the environment when improperly treated, disposed, or otherwise managed.

1.2.32 Household Waste. "Household Waste" shall mean that waste normally generated by a Single-Family Residential Unit or a Multi-Family Residential Unit.

1.2.33 Infectious Waste. "Infectious Waste" means waste capable of producing an infection or pertaining to or characterized by the presence of pathogens including, but not limited to, certain wastes generated by medical practitioners, hospitals, nursing homes, medical testing labs, mortuaries, taxidermists, veterinarians, veterinary hospitals and medical testing labs and any waste that includes animal wastes.

1.2.34 Materials Recovery Facility. "Material Recovery Facility or MRF" shall mean a transfer station which is designed to, and as a condition of its permit, shall, recover for reuse or recycling, at least fifteen percent (15%) of the total volume of material recovered by the facility as set forth in Public Resources Code Section 50000(a)(4).

1.2.35 Maximum Rate Schedule. "Maximum Rate Schedule" means that schedule of rates charged to Residential Units and Commercial and Industrial customers located in the City by Franchisee for Franchisee's waste hauling services, which Maximum Service Rates are effective as provided in Section 9.1 and are attached hereto as Exhibit "A" (Exhibits C1, C2, C3, and C4 to the RFP).

1.2.36 Multi-Family. "Multi-Family" means a development of five (5) or more Residential Units, including a condominium project, duplex, townhouse project, apartment house, or mobile home park, irrespective of whether residence therein is transient, temporary or permanent, such that all Residential Units dispose of Solid Waste and/or Recyclable Materials in a communal Bin(s) at centralized locations.

1.2.37 Oil Waste. "Oil Waste" means used motor oil and used oil filters.

1.2.38 NPDES Program Fee. "NPDES Program Fee" means the annual fee established by the City and collected from the Franchisee to fund the administrative and related costs of the City to carry out the Stormwater Program to achieve compliance with the Clean Water Act of 1972, including those portions, at Section 402 thereof, governing the National Pollutant Discharge Elimination System enacted to eliminate discharges into the Nation's waterways including stormwaters, by regulations issued at 40 CFR § 122.1 et seq., and by the rules, regulations and other mandates promulgated by the Los Angeles Regional Water Quality Control Board and other governmental entities to comply therewith and with other similar Federal and State laws, which Fee shall be and is further described in Section 3.4.

1.2.39 Owner. "Owner" means the person, organization or corporation holding the legal title to the real property constituting the Premises to which solid waste management services are provided or required to be provided. For the purposes of provisions in this Agreement pertaining to the sending of notices, billings or other communications by Franchisee to an Owner, Franchisee may regard as the Owner the person, organization, corporation or other entity shown in the records of the Assessor of the County or as may be indicated by documents recorded in the Office of the Recorder of the County.

1.2.40 Premises. "Premises" means any parcel of land, building(s) and/or structure(s), or portion thereof, in the City where Municipal Solid Waste is produced, generated or accumulated and which is billed as one customer or one Multi-Family complex.

1.2.41 Proposition 218. "Proposition 218" means Articles XIII C and XIII D of the California Constitution and any implementing legislation promulgated thereunder, as may be amended from time to time.

1.2.42 Recyclable Container. "Recyclable Container" shall mean any Bin or Cart provided by the City or Franchisee for the collection of Recyclable Materials.

1.2.43 Recyclable Materials. "Recyclable Materials" means any product salvaged or collected for the purpose of reprocessing or remanufacturing including, but not limited to, glass, newsprint, aluminum, cardboard, plastics or metal.

1.2.44 Residential Unit. "Residential Unit" shall mean any individual dwelling unit used for or designated as a single-family residential as either (i) a Single Family Unit or (ii) a single unit in a Multi-Family Unit.

1.2.45 Single-Family. "Single-Family" means Premises used or designated for residential use and consisting of four (4) or fewer Residential Units, such that each Residential Unit receives its own set of Carts and individual curbside collection services therefore.

1.2.46 Solid Waste. "Solid Waste" means all solid wastes generated by residential, commercial, and industrial sources, and all solid waste generated at construction and demolition sites, and at treatment works for water and waste water, which are collected and transported under the authorization of the City or are self-hauled by residents or contractors. Municipal Solid Waste does not include agricultural crop residues, mining waste and fuel

extraction waste, forestry wastes, ash from industrial boilers, furnaces and incinerators or Hazardous Waste, any waste which is not permitted to be disposed of at a Class III landfill and which fall within the definition of "Nonhazardous Solid Waste" set forth in Title 23, Chapter 15, Section 2523(a) of the California Code of Regulations as amended or designated Class II wastes.

1.2.47 Stormwater Programs. "Stormwater Programs" means and includes, but are not limited to, education of customers, street sweeping and sidewalk cleaning, bus shelter cleaning, promotional activities, recycling and other Waste Diversion efforts, and waste water treatment, as further described in Section 3.4.

1.2.48 Source Reduction. "Source Reduction" means the process of reducing the amount of waste produced by the person or organization generating such waste. Source Reduction occurs through the use of alternative goods and products and/or the reuse of goods and products.

1.2.49 Source Separated. "Source Separated" describes the segregation, by the generator, of materials designated for separate collection for some form of materials recovery or special handling.

1.2.50 Tipping Fee. "Tipping Fee" is the common name for and has the same meaning as Disposal Fee.

1.2.51 Waste Diversion or Diversion. "Waste Diversion" or "Diversion" means to divert from Disposal Sites or transformation facilities (including incineration, pyrolysis, distillation, gasification or biological conversion) through source reduction, Recycling and composting, as provided in Section 41780 of the Act, provided that "Divert" or "Diversion" shall include delivery to transformation facilities if the overall Diversion achieved by the Town is at a level where delivery to such facilities shall be considered Diversion pursuant to the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 *et seq.*

1.3 Delegation of Authority. The administration of this Agreement by the City shall be under the supervision and direction of the Chief Administrative Officer and the actions specified in this Agreement shall be taken by the Chief Administrative Officer and/or his or her designee.

## ARTICLE II FRANCHISE DOCUMENTS

2.1 Documents. The Franchise Documents consist of Chapter 8.24 as the same exists or may be amended in the future of the Municipal Code of the City of Bell, this Agreement, and the work plan component of the proposal response of the selected firm awarded the Franchise (attached as Exhibit "C" hereto). All of the provisions of the Franchise Documents are incorporated and made a part of this Agreement as though set forth in full. Nothing shall prevent the City from amending Chapter 8.24 of the Municipal Code or from adopting such other and further legislation as the City deems necessary or appropriate; provided, however, that the City shall give Franchisee ten (10) days, notice prior to considering any amendment to Chapter 8.24, if such amendment would affect costs of revenue under this Agreement; provided, however, failure to give such notice shall not invalidate the amendment.

**ARTICLE III**  
**GRANT OF FRANCHISE; SCOPE OF FRANCHISE; EXCLUSIONS**

**3.1 Grant of Franchise.**

3.1.1 General Grant. The City grants to Franchisee and Franchisee shall have during the Franchise Term, the exclusive franchise, right, license and privilege (except as provided in Section 3.2 below) to engage in, the business of collecting and transporting all Solid Waste and Recyclable Materials generated within the City of Bell. It is expressly understood that the Solid Waste management business is conducted by Franchisee and not City, and while City grants the right to conduct the business within the terms of this Agreement, the Franchisee must determine what personnel to employ, terms and conditions of employment, what equipment to utilize and at what cost, rates and charges to establish for customers and all methods, costs, obligations and mechanisms to undertake the terms of the franchise.

3.1.2 Duty. To the extent that the franchise granted hereby is exclusive, it shall be so only if Franchisee is and shall be at all times ready, willing and able to perform its obligations under this Agreement, including but not limited to, collecting, transporting and disposing of all Solid Waste generated within the City in accordance with the provisions of this Agreement and all applicable laws, rules and regulations.

3.1.3 Annexations. This Agreement shall extend to any territory annexed to the City during the Term that is not covered by an existing Solid Waste permit, license, agreement or franchise granted by another public entity shall be added hereto, except to the extent that collection by Franchisee within that annexed territory would violate the provisions of Public Resources Code Section 49520. In such event, this Agreement shall become effective as to such area at the earliest possible date permitted by law, and City agrees that it shall cooperate with Franchisee to fulfill any requirement necessary for Franchisee to serve the annexed area consistent with this Section 3.1.3.

**3.2 Scope of Franchise; Mandatory Service And Exclusions.** The franchise granted to Franchisee shall be exclusive within City limits such that Franchisee shall be the sole provider of general Solid Waste and Recyclable Materials hauling services to City residents and businesses. To this end, at all times during the Term of this Agreement the City shall require the Owner of each Single-Family Residential Unit, Multi-Family Residential Unit, Commercial Unit and Industrial Unit where Solid Waste is produced to subscribe to the collection service provided for in this Agreement and in Chapter 8.08 of the Municipal Code. The franchise herein granted shall be subject to the following exclusions:

3.2.1 Intergovernmental Immunity. All (i) universities, (ii) school districts, (iii) other State agencies, (iv) any other governmental entity that is not subject to the City's police powers, and (v) the exclusivity provisions of any ordinance to be adopted by the City;

3.2.2 Self Hauling Exclusions. Self-hauling by City residents and contractors within the City who may elect to opt out of the services provided for by the Franchisee include the following:

(a) *Construction and Demolition Waste.* The collection, recycling and/or disposal of Construction and Demolition Waste from customers through the use of debris boxes or other Bins by a licensed contractor (e.g. a roofing contractor) performing work within the scope of the contractor's license, using equipment owned or leased by the contractor, is not within the scope of this Agreement. In addition the collection, recycling, and/or disposal of Construction and Demolition Waste that requires the use of an affixed container or other specialty vehicles not provided by the Franchisee is also not within the scope of this Agreement. All excluded contractors or specialty vehicle operators must operate in accordance with all governing laws and regulations and submit reports required by City in order to legally haul in the City of Bell; and

(b) *Gardeners and Landscapers.* This Agreement shall not prohibit gardeners and landscapers from collecting, transporting and composting or disposing of Green Waste, as long as they transport such Green Waste to a Green Waste Processing Facility, or other site permitted (or exempt from permitting) by CalRecycle, or its successor agency, in accordance with all governing laws and regulations and submit reports required by City; and

(c) *Sale or Gift of Recyclable Materials.* This Agreement does not prohibit any person from selling Recyclable Materials or giving Recyclable Materials away to persons or entities other than the Franchisee; however, in either instance: (1) the Recyclable Materials must be segregated from and not mixed with Solid Waste; and (2) the segregated solid waste material cannot have a contamination level of greater than 10%, measured by weight or volume. Specifically "contamination" would encompass any putrescible or non-putrescible material not specifically targeted for segregation. A discount or reduction in price for collection, disposal and/or recycling services for any form of unsegregated or segregated Solid Waste, regardless of contamination level, is not a sale or donation of Recyclable Materials and such Solid Waste does not qualify for this exception; and

(d) *Other Services; Niche Recycling Services.* City reserves the right to enter into agreements with other entities for the collection, recycling, and disposal services not provided for in this Agreement, including but not limited to catch basin clean-outs, household hazardous waste collection, and "niche" recycling services which Franchisee does not currently provide; and

(e) *Recyclable Materials Drop Off.* Recyclable Materials not "discarded" by an Owner of Premises which is disposed of at legally mandated public redemption centers that comply with all reporting and other requirements imposed by any political entity having jurisdiction over those redemption centers; and

(f) *Emergency Collections.* The casual or emergency collection, removal, disposal or Diversion of Solid Waste by the City through City officers or employees in the normal course of their employment; and

(g) *Legally-Required Exemptions.* Other collection, removal or disposal activities required to be exempt from mandatory franchise services pursuant to law, or entities exempt from such franchise pursuant to State or Federal law, including but not limited to Non-City governmental entities located within City boundaries.

**3.3 Franchise Fee.** Franchisee shall pay a quarterly fee to City equal to Ten Percent (10%) of Gross Receipts collected the preceding month for any franchise service, or related service, provided under this Agreement. This franchise fee is not subject to any percentage reduction or "net-of-fees" computation without the express approval of the City Council. Franchise Fees are due 30 days after each preceding month's end, up to and including the final month of this Agreement. Any under-payment or non-payment of Franchise Fees is subject to a late payment penalty of 1 ½% per month, or any fraction of a month beyond the prescribed due date. This is an agreed upon penalty that is cumulative upon any balances owing or subsequently found as owing through audit or other means.

**3.4 NPDES Program Fee.** In addition to the Franchise Fee required to be paid by Franchisee as provided in Section 3.3, Franchisee shall pay an NPDES Program Fee monthly to the City. This NPDES Program Fee shall be equal to ten percent (10%) of Franchisee's Gross Receipts and payable to the City under the definitions, terms, and conditions applied to the Franchise fee in Section 3.3. Regulations promulgated by the Los Angeles Regional Water Quality Control Board under the Federal Clean Water Act mandate that cities and their residents must take additional steps to prevent contaminated water runoff. Consistent with the City's current NPDES programs, funds collected through this NPDES Program Fee will be applied toward the City's Stormwater Programs to prevent and/or reduce the contamination of storm drain runoff water. Examples of efforts by the City may include, but are not limited to, education of customers, street sweeping and sidewalk cleaning, bus shelter cleaning, promotional activities, recycling and other Waste Diversion efforts, and waste water treatment.

**3.5 Curbside Recycling Fee.** Franchisee shall pay an amount equal to 30% of the Gross Receipts or other compensation received regardless of form it derives from the sale, barter, or otherwise obtains due to the Franchisee's status as operator of the City of Bell's curbside recycling program. Such payments will be made to the City on a quarterly basis, 30 days after each preceding quarter, up to and including the final quarter of this Agreement. Such payments are to be accompanied by data in a report form as designated by the City. Under-payment or non-payment shall also be subject to the 1 ½% penalty as established in Article 3.3 hereto.

**3.6 Annual Program Fees.** Franchisee shall make the following annual payments to the City on the anniversary date of the Effective Date this Agreement. Failure to make annual payments on the prescribed date is considered a material breach of this Agreement:

(a) *AB 939 Program Fee.* An "AB939 Program Fee" in the amount of one percent (1%) of Franchisee's Gross Receipts is to be remitted by the Franchisee on an annual basis to reimburse the City for costs related to compliance with State recycling mandates, public education, City staff expense for oversight and review of Franchisee recycling activities, and the cost of professional consulting services determined as necessary and/or beneficial by the City.; and

(b) *Performance Audit Program Fee.* An annual payment in the amount of one percent (1%) of Franchisee's Gross Receipts for a third-party review and audit of Franchisee performance, record keeping, and fee calculations. Such an audit will verify the accuracy of franchise and curbside recycling fee payments as well as the Franchisee's

implementation of programs, maintenance of records, and general compliance with the terms of this Agreement.; and

(c) *Hazardous Waste Program Fee.* An annual payment in the amount of one percent (1%) of Franchisee's Gross Receipts to offset City costs for programs related to water quality, illegal dumping, household hazardous waste, electronic and universal wastes, and/or medical waste/medications.

**3.7 Accompanying Information.** Each payment of the Franchise Fee and Curbside Recycling Fee shall be accompanied by a statement setting forth the Franchisee's computations and the total of fee due. Each statement shall include the following certification executed by an officer of the Franchisee: "I hereby certify that the foregoing statement is made by me, that I am authorized to make such statement, and that, to the best of my knowledge and belief, it is true, correct and complete."

#### **ARTICLE IV TERM OF AGREEMENT**

**4.1 Term And Franchise Term.** The term of this Agreement shall commence on the Franchise Start Date (midnight July 1, 2012) and continue until June 30, 2019 (the "Term"). The City and the Franchisee may mutually consent to extend this Agreement by three additional one-year periods, thus creating a maximum ten-year Term.

**4.2 Conditions to Effectiveness of Agreement.** The following actions shall constitute conditions precedent to the effectiveness of this Agreement:

(a) The approval, execution and effectiveness of this Agreement shall have been successfully completed as described in Section 1.2.20 hereof; and

(b) In exchange for a the City granting the franchise pursuant to this Agreement, Franchisee shall pay to City a one-time administrative fee, to be paid no later than fifteen (15) days from execution of the Franchise Agreement by Franchisee, to reimburse the City for all costs related to the preparation of the Request for Proposals that led to the selection of the Franchisee, and the City's legal fees (attorneys' fees and costs) and professional fees (consultant fees and costs), incurred in the negotiation, research and drafting of this Agreement which amount shall be Forty Thousand Dollars (\$40,000) (the "Fee Payment").

(c) All other acts necessary to complete the Closing pursuant to Section 1.2.20 shall have been completed.

**4.3 Representations and Warranties of Franchisee.**

**4.3.1 Corporate Status.** Franchisee, doing business as Consolidated Disposal Service, a company duly organized, validly existing and in good standing under the laws of the State of California. Franchisee is qualified to transact business in the State of California and has the corporate power to own its properties and to carry on its business as now owned and operated and as required by this Agreement.

4.3.2 Corporate Authorization. Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (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 Franchisee have authority to do so. Entering into this Agreement does not violate any provision of any other Agreement to which Franchisee is bound.

4.3.3 No Criminal Convictions. Franchisee represents and warrants that none of its officers or directors have been found guilty of felonious conduct, bribery of public officials, fraud, deceit, false claims, racketeering or illegal transport or disposal of Hazardous Waste. The term "found guilty" shall be deemed to include any judicial determination of guilt including, but not limited to, pleas of "guilty", "nolo contendere", "no contest" or "guilty to a lesser charge" entered as part of a plea bargain.

4.3.4 No Prior Terminations for Misconduct. Franchisee represents and warrants that no prior agreement to which Franchisee was a party was terminated for misconduct or cause by the Franchisor.

4.3.5 Accuracy of Representations. The representations and warranties made by Franchisee in this Section 4.3 above are true and correct on and as of the Effective Date of this Agreement.

4.4 Extension of Franchise for Bid Process. Franchisee agree to comply with Section 11.12 herein by executing a temporary extension of services under this Agreement at the then prevailing rates for a period up to nine (9) months after the end of the Term, and to comply with the other requirements of Section 11.12, in order to permit the City a reasonable time to conduct a bid process for new Solid Waste management services.

## ARTICLE V SERVICES OF FRANCHISEE

5.1 General Standards. The work to be performed pursuant to this Agreement shall include the furnishing of all supervision, labor, materials, equipment, tools, expertise and any other items necessary to perform the services described in this Agreement. All work shall be accomplished in a courteous, thorough and workmanlike manner and adhere to the highest standards consistent with the best practice in the industry.

### 5.2 Standards of Performance.

5.2.1 Availability of Franchisee. Franchisee has established, and shall continue to maintain a local office for the purpose of receiving customer payments and handling customer inquiries, orders and complaints. The "local" office must remain in a location within fifteen (15) miles of the City boundary and having the same telephone area code as that existing in the City. The local office shall be open to the public between the hours of 8:00 a.m. to 5:00 p.m., five (5) days per week, Monday through Friday, Holidays excepted. A representative of Franchisee shall be available during office hours for communication with the public at such local office. Additionally, the Franchisee shall continue to employ the services of a telephone answering exchange for calls during non-business hours and provide a telephone system sufficient and

adequate to handle calls during peak periods. The Franchisee shall provide the City's Chief Administrative Officer and the City's Police and Fire Departments with any updated emergency telephone numbers. Franchisee shall have a representative or answering service available at said telephone number during all hours other than normal office hours.

5.2.2 Citizen Complaints. The Franchisee shall respond to all complaints within twenty-four (24) hours and shall exercise due diligence to resolve all complaints. The City may, but is not obligated to, respond to complaints that have not been resolved within twenty-four (24) hours and may charge the Franchisee for the actual costs incurred therefor. In connection herewith, Franchisee shall adequately staff its telephone system so that it is capable of handling all calls during peak business hours.

5.2.3 Record of Complaints. Franchisee shall maintain a record of all complaints received by mail, by telephone or in person (including date, name, address of complainant and nature of complaint) for a period of three (3) years. Franchisee will maintain records listing the date of consumer complaints, the customer, describing the nature of the complaint or request, and when and what action was taken by the Franchisee to resolve the complaint.

5.2.4 Disputes. Disputes between the Franchisee and its customers regarding the services provided in accordance with this Agreement may be resolved by the City; provided, however, the City shall not be obligated to resolve any such disputes. The City Council by resolution may prescribe the procedures for processing customer complaints. The City's decision shall be final and binding unless challenged in a court of competent jurisdiction.

5.2.5 Record of Non-Collected Materials. The Franchisee shall notify customers in the event any item left for disposal is not picked up. Said notification shall be in writing, state Franchisee's telephone, address and shall give the reason for non-collection. Reasons for non-collection may include, but are not limited to the following: containers inaccessible to Franchisee (after Franchisee has made a reasonable effort to secure access); improper container; container overfilled; heavy container; or, the container includes Hazardous Waste. The Franchisee shall maintain a record of all items not collected and provide a copy of said record to the Chief Administrative Officer or his or her designee on a monthly basis.

5.2.6 Property Damage Caused by Franchisee. The Franchisee shall be responsible for the cost of repairing any property damaged by the negligent or intentional conduct of its employees or agents.

5.2.7 Quality of Service Surveys. The City requires that the Franchisee provide at its own expense, twice annually a "quality of service" survey of Franchisee's customers during the term of the Agreement. Prior to finalizing the survey form, the City shall review the survey with the Franchisee. Results of the quality of service survey shall be reviewed with the Franchisee and used to discuss improvements in service delivery.

5.2.8 Collection Route Audits. The City reserves the right to conduct audits of Franchisee's collection routes. The Franchisee shall cooperate with the City in connection therewith, including permitting City employees or agents, designated by the City, to follow

behind the collection vehicles, and/or to dump the loads from targeted collection routes at a material recovery facility designated by the City, in order to determine waste composition. The Franchisee shall have no responsibility or liability for the salary, wages, benefits or worker compensation claims of any person designated by the City to conduct such audits. The Franchisee will be required to pay the tipping fee at a City designated material recovery facility, for the purposes of a route audit, up to the amount contractually paid by the Franchisee at the designated material recovery facility authorized under this Agreement. It will be the City's responsibility to pay any additional tipping fees.

5.2.9 Curbside Recycling Audits. Franchisee is required to conduct quarterly waste composition audits, at no charge to the City, of the solid waste collected from residents in curbside recycling containers. The purpose of this audit is to establish the materials, and their relative percentages by weight, in the residential curbside waste stream. The City and/or its designee shall have the right to be present to oversee the Franchisee while this audit is conducted.

5.2.10 "On-Call" Equipment and Personnel. During normal business hours, the Franchisee shall have "on-call" at least one (1) truck to handle called-in pick-ups or missed collections. After normal business hours, the Franchisee shall have "on-call" the necessary manpower and equipment to respond to customer emergencies that are an immediate threat to life or property. Franchisee's on-call equipment and personnel shall also be available to assist the City with debris collection and removal within a reasonable time resulting from emergencies and natural disasters, excepting that nothing in this Section shall require Franchisee to collect, haul or dispose of waste that Franchisee is not permitted to handle.

5.2.11 Emergency Services. Franchisee shall assist City in the event of terrorist attack or major disaster, such as an earthquake, storm, riot or civil disturbance, by providing collection vehicles and drivers normally assigned to the City, at Franchisee's actual costs. Franchisee shall cooperate with City, county, State and Federal officials in filing information related to a regional, State or Federally-declared state of emergency or disaster or terrorist attack as to which Franchisee has provided equipment and drivers pursuant to this Agreement.

### 5.3 Hours of Operation.

(a) Residential Hours. Collection services at each Single-Family Residential Unit and Multi-Family Residential Unit shall not start before 7:00 a.m. nor continue after 5:00 p.m. of any day.

(b) Commercial Hours. Collection services at Commercial and Industrial Units shall not start before 7:00 a.m. nor continue after 5:00 p.m. of any day.

(c) Revisions to Hours. City may, from time to time, revise the collection hours specified in Sections 5.4.1 and 5.4.2 of this Agreement by duly adopted resolution.

## 5.4 Residential Collections.

5.4.1 Residential Service. Collection service for Single-Family Residential Units and Multi-Family Residential Units shall occur at least once per week on a schedule approved by the Chief Administrative Officer. Holiday make-up collections shall occur within one business day of the Holiday on which pickup was not performed.

5.4.2 Collection Quantities. The basic service level and rates specified in the Compensation Schedule shall be the default collection quantity. For single-family residential customers, and multi-family customers as designated by the City, that is the designated 95 gallon refuse, 64 gallon recycling, and 64 gallon green waste Carts listed therein. For multi-family, commercial, and industrial customers that is a three-cubic-yard bin. Collection of lesser or additional collection quantities, including the use of alternatively sized containers shall be the right of the Franchisee's customers, provided the container size is listed in the Compensation Schedule and ascribed a specific franchise rate, and that any lesser service collection quantity is reasonably compatible with the customer's waste generation quantities. The City shall be the ultimate arbiter of collection quantity disputes between the Franchisee and its customers.

### 5.4.3 Containers.

(a) *Multi-Family Containers & Collections.* Multi-Family complexes utilize one or more Provided Container(s) (generally at least one Bin for Solid Waste) located at a central on-site location and shared by multiple Residential Units. The location of containers and the location for automated collection therefrom in Multi-Family complexes shall be mutually-agreed as between the Multi-Family site management and Franchisee, excepting that any storage or placement of Multi-Family containers in public streets or rights-of-way shall be subject to the prior written approval of the City. Multi-Family complexes consisting of five (5) units or more are required to recycle pursuant to AB 341 (2011) and must either utilize Recyclable Containers or subscribe to refuse collection service that includes material recovery facility processing of all said refuse.

(b) *Residential Containers & Collections.* Automated collections for residential units (i.e., stand-alone Single-Family Units or Multi-Family units designated by City as eligible for Cart services) shall be made from the curbside or from alleyways adjacent to the Residential Unit. Residents may elect to place containers at an alternate collection location, if approved by City, provided that the placement and retrieval of containers complies with the requirements of the Municipal Code. Each Single Family unit shall receive from City, at a minimum, one Solid Waste Cart, one Recyclable Cart, and one Green Waste Cart.

5.4.4 Public Outreach Programs And New Billing Services for Residents. Franchisee shall implement a City-approved Bi-Lingual (English/Spanish) public outreach to coincide with the start of Residential Unit service. This public outreach must clearly establish the new billing procedures, explain the billing format, clearly describe the customer's responsibilities, and provide a toll-free customer service number for the Franchisee. In addition, Franchisee shall establish and maintain all public educational programs and efforts in Bi-Lingual (English/Spanish format, including the following:

(a) *City-Wide Newsletter.* Franchisee shall prepare a semi-annual newsletter to be distributed to all residents in the City subscribing to Franchisee's hauling services. The City-wide newsletter shall be mailed to Franchisee's customers within two months of the anniversary date of this Agreement, and approximately six months thereafter, and shall be subject the review and approval by the City prior to each distribution. The newsletter shall discuss various important topics in waste management, including but not limited to local Recycling programs, proper household waste and oil waste management, source reduction opportunities, and important developments in waste management practices that are pertinent to City residents.

(b) *Franchisee Website.* Franchisee shall develop and maintain an up-to-date website about Franchisee, its services, the parameters of any Recycling or source reduction programs administered by Franchisee, and a description of any methods by which residents can contribute to higher levels of Recycling and source reduction.

(c) *Bulky Waste Program.* Franchisee shall implement that Bulky Waste outreach programs described in Section 5.7 hereof.

(d) *Waste Diversion Outreach.* Franchisee shall implement those educational efforts regarding Waste Diversion and strategies therefore as described in Section 6.6 hereof.

(e) *Billing Changes.* Franchisee will implement a new billing services as described in Section 9.5 hereof. Franchisee shall give all customers at least two (2) written notifications over a sixty (60) day period prior to commencing such billing. The notices shall be reviewed and approved by the City.

(f) *Household Hazardous Waste and Oil Waste.* Franchisee shall implement public outreach efforts regarding Household Hazardous Waste and Oil Waste established in cooperation with the City. Such effort will include not less than two general mailing each year of City approved billing inserts publicizing household hazardous waste and oil waste collection events.

(g) *Billing Inserts.* Franchisee shall include any City requested billing insert, at no cost to the City or any customer of the Franchisee, for the term of this Agreement, provided said insert does not increase the Franchisee's cost of postage.

#### 5.4.5 Collection Schedule.

(a) *Notice of Residential Collection Schedule.* Once annually, Franchisee shall provide written route schedules and maps of the routes to the City's Chief Administrative Officer.

(b) *Changes in Residential Collection Schedule.* Any changes in the route schedule shall require the prior written approval of the Chief Administrative Office. City may require changes in the route schedule for among other things, to improve service or resolve complaints. Prior to the change of a route schedule, Franchisee shall provide written notice of the change to affected customers thirty (30) days in advance.

## **5.5 Commercial and Industrial Collections.**

(a) **Frequency of Commercial and Industrial Service.** Commercial and Industrial Units shall be provided with a minimum one-time weekly collection. Commercial and Industrial Units may share containers with neighboring business establishments provided that all sharing units share the same Premises.

(b) **Commercial and Industrial Collection Locations.** Unless expressly instructed by the City, Franchisee shall provide containers only to those Commercial or Industrial Units that provide an appropriate location for such container in accordance with the Municipal Code.

**5.6 Temporary Services.** Temporary Bin service and temporary Cart services (i.e., a Container delivered to a residential, commercial, or industrial site for the collection and removal of Solid Waste or debris) shall be provided at the frequency and location desired by the customer in accordance with the requirements of the Municipal Code.

## **5.7 Collection of Bulky Waste.**

5.7.1 **Residential Bulky Waste.** Franchisee shall provide Bulky Waste collection to both single and multi-family residential customers, at no additional charge, on a once per month basis. As noted in section 1.2.6 of this Agreement, Bulky Waste as defined by the City shall include electronic and universal waste items. A customer shall have the right to twelve (12) Bulky Items pickups per year, with up to five (5) items per pickup. Such pickups shall take place on a scheduled collection day each month (i.e. last Saturday of the month) so as reduce resident confusion. Franchisee will establish the bulky waste collection schedule with the Chief Administrative Officer prior to each contract year. Franchisee will include this schedule of bulky waste collection in their residential customer billings.

5.7.2 **Special Bulky Waste Collections.** The Franchisee will also provide a bulky item service call-in program, provided the resident receives such service within 48 hours of initial contact or on the specific day they are instructed to place their item(s) out for collection. The resident shall be charged a fee for such service as described in Exhibit "A."

5.7.3 **Abandoned Bulky Waste Collections.** Franchisee shall collect and remove at no charge any abandoned bulky waste items dropped in City public right-of-way areas, at City parks, and other public locations. Collection shall be made within 24 hours of notice by the City or a customer of the Franchisee. City expects that the Franchisee will provide a suitable collection vehicle and have such vehicle available to perform needed collections for up to three hours per day, Monday through Friday, between 7:00 a.m. and 4:00 p.m., with no service on holidays.

**5.8 Christmas Tree Pickup.** Franchisee agrees to collect Christmas trees at no additional charge to residents for a four (4) week period beginning December 26th of the applicable calendar year.

**5.9 Free Service to City Facilities.** The Franchisee shall collect not less than once per week, at no cost to the City, all Solid Waste, Green Waste and Construction and Demolition

Debris from City Hall (6330 Pine Avenue), the City Maintenance Yard (5320 Gage Avenue), and the City Community Center (6250 Pine Avenue), or such other locations as the City may additionally designate, utilizing container sizes and following a collection schedule as determined by the City.

**5.10 Development Review.** Franchisee, upon City's request, shall assist the City in the review of applicants' plans for projects covered by Public Resources Code § 42911, including commercial and multi-family projects, to provide for effective and economical accumulation and collection of Solid Waste, Organic Waste and Recyclable Materials.

**5.11 Good Corporate Citizenship.** Franchisee's commitment to good corporate citizenship as the holder of an exclusive franchise in the City is set forth in Exhibit "D."

## **ARTICLE VI WASTE DIVERSION.**

**6.1 Solid Waste Diversion.** AB 939 currently sets the directive of diverting fifty percent (50%) of the City's Solid Waste. If the City fails to implement its required plans to achieve the aforementioned directive under AB 939, the California Integrated Waste Management Board ("Board") may impose administrative civil penalties of up to TEN THOUSAND DOLLARS (\$10,000.00) per day until the City implements its plans. The City requires the franchisee to meet or exceed this State mandate by diverting fifty percent (50%) of the solid waste collected under this franchise agreement. Furthermore, City anticipates that the State Legislature will adopt new legislation that will increase the minimum diversion requirement. Upon the effective date of any new legislation that affects the diversion requirements currently imposed by AB 939, Franchisee agrees to implement a revised or new diversion program meeting such amended legislative requirements. Failure to implement an amended Diversion program based upon new State legislation mandating waste diversion levels shall constitute a default of this Agreement.

**6.2 Construction and Demolition Waste Diversion.** In addition to meeting the solid waste diversion requirements of 6.1 above, City wishes to meet the construction and demolition waste diversion goals established by SB 1374 (2002) and the California Green Building Code (2011) by diverting 75% of construction and demolition waste materials. The Franchisee is required to meet a 75% diversion level for all construction and demolition wastes collected under this Agreement. A good faith effort exemption may be granted to the Franchisee by the City on a project-by-project basis.

**6.3 Waste-to-Energy Diversion.** As directed by the City, Franchisee shall take residue from the processing of refuse to a waste-to-energy facility so that the City receives the maximum allowable diversion or disposal avoidance credit available through CalRecycle or its successor agency.

**6.4 SHARPS Diversion.** Franchisee shall provide mail-in containers to residents requesting such containers for the purpose of properly disposing of medical needles or other wastes defined as SHARPS by CalRecycle or its successor agency. This service shall be known as the "SHARPS Program" and will be provided at no cost to the City or its residents. Franchisee

shall publicize the SHARPS Program in all semi-annual newsletters and on its website to ensure that City residents are aware of this program and how to participate.

**6.5 Maintenance of City AB 939 Programs.** The Franchisee shall be responsible to maintain all of the City's AB 939 programs established within franchised service by this Agreement.

**6.6 Franchisee Waste Diversion Responsibilities.**

6.6.1 Cooperation and Education. The Franchisee shall cooperate with the City's efforts to develop and implement public education and information programs designed to promote Source Reduction, Recycling and other waste reduction activities in general as well as specific Waste Diversion strategies. Franchisee shall have a bi-lingual (English/Spanish) public education program in place where it will distribute flyers and leaflets to residences of the City (free of charge) and the Franchisee will visit schools and make presentations on the proper disposal of waste and the importance of Recycling.

6.6.2 Implementation of Strategies and Penalties. The Franchisee shall implement the strategies jointly developed and agreed to by the Parties. If Franchisee's failure to perform its obligations under this Section 6.6 results in the imposition of penalties against the City pursuant to the provisions of AB 939, Franchisee shall reimburse the City for such fine within thirty (30) days of imposition of such fine or penalty. City acknowledges that to meet the mandates of AB 939, additional and significant legislation affecting the disposal of Solid Waste not covered by this Agreement may be required.

6.6.3 Waste Diversion Reporting Requirements. The Franchisee shall comply with the Waste Diversion reporting requirements established by the City. Franchisee shall provide City with quarterly reports in a form acceptable to the City and adequate to meet City's reporting requirements to CalRecycle on compliance with AB 939, including a breakdown of the tons collected, tons diverted, and tons disposed, by service type prescribed by this Agreement. Franchisee further agrees to provide program specific data required by the City to meet reporting requirements to any Federal, State, or local entity having the authority to request such data.

6.6.4 Meet and Confer Process. If Franchisee fails to divert the required amount of the City's Solid Waste, as described in this Agreement, Franchisee and City shall meet and confer to develop a revised or new diversion program. If the City and Franchisee fail to agree on a revised or new diversion program within one hundred twenty (120) days of commencing the meet and confer process (which date may be extended by mutual written agreement), notwithstanding anything to the contrary contained herein, City may elect, in its sole discretion, to terminate this Agreement on ninety (90) days written notice. Franchisee agrees to continue performance under this Agreement until City hires a new contractor.

**6.7 Recycling Program.**

6.7.1 Recycling Containers. Franchisee shall conduct a single stream commingled collection of Recyclable Materials. One 64 gallon container shall be used at each Residential Unit receiving curbside service for collection of commingled Recyclable Materials ("Recyclable Container"). Every Recyclable Container shall be clearly labeled. Residential Units

shall place all Recyclable Materials within such Recyclable Containers as directed by the Franchisee; to this end, concurrent with Franchisee's delivery of a Recyclable Container to any Residential Unit, Franchisee shall provide instructions on the use of the Recyclable Container. Franchisee shall, at no charge, replace any containers which become unusable by reason of normal conditions of wear and tear.

6.7.2 Ownership of Solid Waste and Recyclable Materials. Except as otherwise provided by law, once Solid Waste, Refuse, Recyclable Materials and/or Green Waste have been collected by Franchisee, ownership transfers to Franchisee. Franchisee is hereby granted the right to retain, recycle, compost, dispose of and otherwise use such waste, or any part thereof, in any lawful fashion or for any lawful purpose desired by Franchisee. Subject to the provisions of this Agreement, and excepting any material which is not a waste material and which was inadvertently discarded, Franchisee shall have the right to retain any benefit or profit resulting from its right to retain, recycle, compost, dispose of or use the refuse which it collects. Solid Waste and any other material which is disposed of at a Disposal Site or sites (whether landfill, transformation facility, transfer station or material recovery facility) shall, as between the City and Franchisee, remain the responsibility of the Franchisee, and Franchisee shall retain ownership of the same.

6.7.3 Recycling Frequency. Franchisee shall collect Recyclable Materials from Residential Units once each week from containers. Franchisee shall collect Recyclable Materials from Multi-Family Residential Units, Commercial and Industrial Units at a reasonable frequency to be determined by the Franchisee.

6.7.4 Residential Recycling Location. Franchisee shall collect Recyclable Materials set out in Recyclable Containers by Residential Units or City-designated Multi-Family Units from the curb or other Franchisee-approved location.

6.7.5 Recycling Revenues. Franchisee shall be entitled to all revenue produced from the sale of Recyclable Materials collected, salvaged or purchased by Franchisee; provided, however that thirty percent (30%) of any Gross Receipts, revenues, or other compensation in any form received by the Franchisee related to the City's curbside recycling program, shall be paid by Franchisee to the City. Furthermore Recycling Revenues are not considered Gross Receipts subject to City Franchise Fees.

6.7.6 Franchisee As Authorized Recycling Agent. City hereby designates Franchisee as its authorized recycling agent for the purposes of conducting recycling activities within the City pursuant to the terms of Public Resources Code Section 40105. Notwithstanding the foregoing, Franchisee at all times shall be and remain independent from the City.

## **ARTICLE VII**

### **MATERIALS RECOVERY FACILITIES FOR RECYCLABLE PROCESSING.**

7.1 General. As part of its approved work plan, (attached as Exhibit "C" hereto), Franchisee has described all proposed facility names, SWIS number and addresses where materials will be delivered and sorted and the Tipping Fees have been calculated based on said description. Franchisee has included the type of permits for the facility (i.e. certified to receive

recyclable materials, household refuse, etc.) and stated the permitted total tonnage allowed (capacity) at facility per day and current tonnage of materials received. Franchisee may continue to use those Disposal Site services and Materials Recovery Facilities services for the process of all Recyclable Materials. The provisions hereunder shall apply if Franchisee seeks to change an approved Disposal Site.

**7.2 Changes to Disposal Site.** Should Franchisee determine to change service providers for Disposal Site services and/or Materials Recovery Facilities services, or should Franchisee materially change the scope of Disposal Site services and/or Materials Recovery Facilities services utilized by it, then the City reserves the right, in its sole discretion, to require Franchisee to put such services to a competitive bid process. The City further reserves the right, in its sole discretion, to require Franchisee to competitively bid Disposal Site services and Materials Recovery Facilities services for the processing of all Recyclable Materials once every five (5) years commencing from the Effective Date hereof.

**7.3 Competitive Bid Process.** In any competitive bid process, separate bid documents may be prepared for Commercial Industrial and Residential Unit waste streams at the discretion of Franchisee. Franchisee shall conduct the bidding process, provided the City shall be allowed to review the bid documents and prospective bidder's list a minimum of two (2) weeks prior to being sent out to bid. City shall submit any written comments to the bid documents within ten (10) days of receipt of such documents from Franchisee and the Franchisee shall revise the bid documents to reflect the City's comments. Franchisee shall provide bid documents to any additional Disposal Sites or Materials Recovery Facilities requested by the City. Bidders must be allowed a minimum of three (3) weeks to submit a bid. Franchisee shall provide the bids to the City for review. The bids shall show the bid prices broken down to show separately the revenue per ton of Recyclable Materials and processing costs. Franchisee shall show transportation costs (defined as cost per mile multiplied by distance to the Disposal Site or Materials Recovery Facility) to each facility submitting a bid.

**7.4 Lowest Bid.** Franchisee shall be required to use the Materials Recovery Facility and/or Disposal Site providing the lowest responsible bid (either lowest total cost or highest net revenue), including travel costs to the facility. If the bid price submitted by the Disposal Site or Materials Recovery Facility is a payment to Franchisee, with no further revenues realized from the sale of the Recyclable Materials, it shall be classified as revenue. If in the event that no Disposal Site or Materials Recovery Facility provides a bid lower than the costs of the facilities being used as of the Effective Date hereof, Franchisee shall continue to use the existing facility(ies).

**7.5 Contract Term.** The length of contract entered into between Franchisee and the Disposal Site or Materials Recovery Facility operator shall be at the discretion of Franchisee; provided, however, that the maximum term shall allow for the possibility of the City requiring facilities to be re-bid under a competitive process every five (5) years in accordance with this Section.

**ARTICLE VIII  
VEHICLES, EQUIPMENT AND PERSONNEL.**

**8.1 Vehicles.**

8.1.1 General. Franchisee shall provide, within 12 months of the Effective Date of this Agreement, a new and alternatively fueled fleet of collection vehicles sufficient in number and capacity to perform efficiently the work required by this Agreement in strict accordance with its terms. In the interim the Franchisee agrees that no vehicle used for franchised service shall be more than three years old at the Franchise Start Date and that all vehicles will be in "like-new" condition. All vehicles shall be uniformly painted. All vehicles shall be registered with the California Department of Motor Vehicles and shall meet or exceed all applicable State and local requirements, including, without limitation, those of the California Highway Patrol ("CHP"), throughout the term of this Agreement.

8.1.2 Truck Bodies. All truck bodies used by Franchisee shall be constructed of metal, shall be watertight and leakproof and shall be so constructed as to prevent odors or the falling, leaking or spilling of Solid Waste, Recyclables, or other materials. Each vehicle shall carry at all times a broom and shovel to be used for the immediate removal of any spilled material. Each vehicle shall also carry a fire extinguisher and first aid kit.

8.1.3 Backup Alarm. Each vehicle used for collecting, hauling or disposing of Solid Waste or Recyclables shall be equipped with an audible warning device that is activated when the vehicle is backing up.

8.1.4 Gross Vehicle-Weight Limit. No vehicle used for collecting, hauling or disposing of Solid Waste or Recyclables shall be loaded in excess of the manufacturer's gross vehicle weight rating or in excess of the maximum weight specified by the California Vehicle Code, whichever is less. Evidence of the manufacturer's name and gross vehicle weight rating shall be maintained in, or upon, every vehicle.

8.1.5 Vehicle Identification. All vehicles used in the performance of this Agreement shall bear the Franchisee's name, phone number and vehicle number in minimum lettering of two (2) inches.

8.1.6 Residential Service Vehicles. Vehicles used for Residential collection services shall be fully automated side-loading refuse trucks, using a fully mechanized arm to pick up and dump automated waste collection containers. Drivers shall not be required to exit the vehicle to assist with securing the containers to, or lifting the containers into, the refuse collection truck.

8.1.7 Alternative Fuel Vehicles. The Franchisee shall use alternative fuel vehicles approved by the South Coast Air Quality Management District for all collection services. Vehicles shall meet all requirements specified per AQMD Rule 1193 as it may be amended from time to time.

## **8.2 Vehicle Maintenance and Appearance.**

8.2.1 Vehicle Inventory. Franchisee shall provide the City with a truck inventory of all trucks to be used in the performance of this Agreement, which includes make, model, age, and mileage of the vehicle, and all inspection records. When the entire alternatively fueled fleet of collection vehicles are in service, and annually thereafter, the inventory shall be updated.

8.2.2 Preventive Maintenance and Repair Program. Franchisee shall develop and have available for City review a complete and comprehensive preventive maintenance and repair program. Franchisee shall perform all scheduled maintenance functions in accordance with the manufacturer's specifications and schedule and shall inspect each vehicle daily to ensure that all equipment is in good working order. Franchisee shall keep accurate records of all vehicle maintenance and repairs, recorded according to date and mileage, nature of maintenance or repair and the signature of a maintenance supervisor or mechanic that the maintenance or repair has been properly performed. Franchisee shall make such maintenance records available to City on request.

8.2.3 Vehicle Cleaning. Each vehicle used within the City shall be cleaned thoroughly by washing with water after each day's use. Vehicles shall be washed completely at least once a week and steam-cleaned on a regular basis so as to present a clean appearance and minimize odors, but in no event less than once a month.

8.2.4 Vehicle Storage. No vehicle used by Franchisee in performance of this Agreement shall be stored on any public street or other public property in the City.

8.2.5 Container Condition. Franchisee at its sole cost and expense shall maintain all Franchisee Bins in good condition and repair as needed and shall clean and paint each container annually. More frequent cleaning and painting shall be conducted by Franchisee if needed. Franchisee shall, at no charge, replace any containers (Carts or Bins) which become unusable by reason of normal conditions of wear and tear. During all times that a container is in the custody and control of Franchisee, Franchisee shall not store such Container in or on public streets or rights-of-way.

## **8.3 Inspections.**

8.3.1 Initial City Inspection. Within the first thirty (30) days following the date Franchisee provides a copy of its Vehicle Replacement and Acquisition Plan to City or any update thereto, the City may inspect Franchisee's vehicles for the purpose of determining the adequacy of Franchisee's Vehicle Replacement and Acquisition Plan to provide vehicles that are safe, sanitary and of good appearance.

8.3.2 City Inspections. Franchisee shall give the City at least fifteen (15) days prior written notice of any vehicle inspection to be performed by the CHP and the City may elect to observe the CHP inspection. Without limiting the City's right to observe the CHP inspections, City reserves the right to 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 provisions of the Municipal Code and the State Vehicle Code, including but not limited to California Vehicle Code Sections 27000(b), 23114, 23115, 42030, 42032, and all Vehicle Code Sections regarding smog equipment requirements. 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 shall be returned to service until it conforms with applicable codes and such conformance has been acknowledged by City. The City may elect in its sole discretion to hire an independent contractor to perform a comprehensive inspection of Franchisee's vehicles. If the City hires an independent contractor to perform the inspection on behalf of the City the Franchisee shall pay for the cost of such inspection. City shall act prudently in requesting any such inspection.

8.3.3 Brake Inspections. The brake system of each vehicle used in performance of this Agreement shall be inspected bi-annually by the CHP and shall comply with State law. Notice of certification shall be filed with the City within thirty (30) days after each such certification. Failure to submit the required certification shall be grounds for terminating this Agreement.

8.3.4 Correction of Defects. Following any inspection, the Chief Administrative Officer shall have the right to require Franchisee to take out of service any vehicles and equipment not in good working order and cause Franchisee to recondition or replace any vehicle or equipment found to be unsafe, unsanitary or unsightly within thirty (30) days of notification of defect in such vehicle or equipment. The Chief Administrative Officer's determination may be appealed to the City Council.

#### **8.4 Personnel**

8.4.1 General. Franchisee shall furnish such qualified drivers, mechanical, supervisory, clerical and other personnel as may be necessary to provide the services required by this Agreement in a courteous, safe and efficient manner. When hiring new employees, whether at the commencement of service hereunder, or subsequently, Franchisee agrees to conduct outreach in the city and give preference for qualified applicants residing in the City of Bell. Contractor shall provide evidence of job recruitment efforts.

8.4.2 Driver Qualifications. All drivers shall be trained and qualified in the operation of collection vehicles and must have in effect a valid license, of the appropriate class, issued by the California Department of Motor Vehicles.

8.4.3 Uniforms and Identification Badges. Franchisee shall require its drivers and all other collection personnel to wear a suitable and appropriate uniform as a means of identifying the employee. All other employees of Franchisee who come into contact with the public shall carry suitable identification badges or cards upon their person.

8.4.4 Employee Appearance and Conduct. All employees, while engaged in the collection of Solid Waste or Recyclables within the City or otherwise engaged in collection services described in this Agreement, shall be attired in uniform. At least one member of every collection truck crew shall be able to read and speak English. Franchisee shall use its best efforts

to assure that all employees present a neat appearance and conduct themselves in a courteous manner. Franchisee shall regularly train its employees in customer courtesy, shall prohibit the use of loud or profane language, and shall instruct collection crews to perform the work as quietly as possible. If any employee is found not to be courteous or not to be performing services in the manner required by this Agreement, Franchisee shall take all appropriate corrective measures.

8.4.5 Background Check. The City reserves the right to perform a security and identification check through the City's Police Department upon Franchisee and all its present and future employees, in accordance with accepted procedures established by the City, or for probable cause.

8.4.6 Safety Training. Franchisee shall provide suitable operational and safety training for all its employees who use or operate vehicles or equipment for collection of Solid Waste or who are otherwise directly involved in such collection. Franchisee shall train its employees involved in Solid Waste and/or Recycling collection to identify, and not to collect, Hazardous Wastes. Franchisee and its employees shall comply with the terms of all contracts between the Los Angeles County Sanitation District and any Disposal Site that is used by Franchisee.

8.4.7 Safety. All work performed pursuant to this Agreement shall be performed in a manner that provides safety to the public and meets or exceeds safety standards outlined by the California Construction Safety Orders under the State of California Code of Regulations ("CAL-OSHA"). City reserves the right to issue restraint or cease and desist orders to Franchisee when unsafe or harmful acts are observed or reported to City. Franchisee shall instruct its employees to report immediately any hazardous conditions or Hazardous Wastes they observe within the City during the course of their work to the City.

8.4.8 No Gratuities. Franchisee shall not permit its employees to demand or solicit, directly or indirectly, any additional compensation or gratuity from members of the public for the work performed by those employees pursuant to this Agreement.

## ARTICLE IX FRANCHISEE'S COMPENSATION

9.1 Rates Subject to Proposition 218. Any increase in service rates charged to customers for services under this Agreement which exceed currently existing rates are subject to Proposition 218, including both the initial service rates charged hereunder, and any increases imposed thereafter. If the service rates initially proposed exceed the current rates, the Franchise Start Date shall be extended until a Proposition 218 hearing has been held and schedule of Maximum Service Rates can be agreed upon by the Parties. If the Parties cannot agree upon a schedule, then this Agreement is terminated.

9.2 Maximum Rate Schedule. In the attached Exhibit "A", which is incorporated herein by this reference ("Maximum Rate Schedule"), the City has approved the maximum service rates which may be charged by Franchisee to its customers in the City. If approved, the Maximum Rate Schedule will become effective following the Proposition 218 hearing provided

in Section 9.1, on Franchise Start Date or when service under this Agreement commences, whichever is earlier. Franchisee may establish its rates for the services provide hereunder so long as they do not exceed the rates in the Maximum Rate Schedule, with permitted adjustments as provided in this Article IX. Franchisee shall not receive any other fees or compensation for the services to be performed pursuant to this Agreement in excess of those provided in the Maximum Rate Schedule until such additional fees or compensation have been duly noticed and subjected to a public hearing process in accordance with Proposition 218.

**9.3 Rate Composition.** During the Term of this Agreement, all franchise rates will be divided into two rate components: "Collection" and "Disposal". Such a "component" breakdown must be disclosed to the City within the initial rates for this Agreement and as part of any subsequent rate increase request by the Franchisee. Such collection components are not required to be listed in franchise rate sheets or included on billings to the Franchisee's customers.

**9.4 Adjustments to Maximum Rate Schedule.**

**9.4.1 Cost of Living Adjustments.** On the anniversary of the Service Commencement Date, and annually thereafter, the Maximum Permissible Rates shall be adjusted as follows, subject to the assent of the City and any necessary compliance with Proposition 218:

(a) *Adjustment to Collection Component of Rates.* The "Collection Component" of rates shall be adjusted to reflect 90% of the "Percentage Change in CPI", excepting that such annual CPI increases in the "Collection Component" of rates shall be capped at a maximum percentage increase of three percent (3%). "Percentage Change in CPI" shall mean the percentage change in the All Urban Customers, Los Angeles, Riverside, Orange County index, for the previous 12-Month period ending in 30 days prior to the anniversary date. (For instance, a July 1, 2013, Percentage Change in CPI would be the change between the CPI index in May 2013 and the CPI index in May 2012.)

(b) *Adjustment to Disposal Component of Rates.* The "Disposal Component" of rates shall be adjusted only for increased costs to the Franchisee from landfill, transfer, and/or transformation facility tip fee adjustments. For the rate adjustment period under review the Franchisee is responsible for submitting substantiation of any such cost increases for City review. Should the City determine that any fee adjustments presented by the Franchisee are 5% or more greater than those charged to any jurisdiction within five miles of the City of Bell, the City shall have the right to solicit bids from other landfill, transfer, or transformation facilities and to require the Franchisee to utilize said facility and/or incorporate said facility rate into the Disposal Component adjustment of franchise rates in compliance with the provisions of Article VII.

**9.4.2 Special Circumstances Adjustments.**

(a) *Extraordinary Circumstances.* Due to extraordinary circumstances in which Franchisee can demonstrate that Franchisee is not earning a reasonable rate of return under circumstances which are beyond Franchisee's control, the Franchisee may request the City to hold a Proposition 218 hearing to increase one or more fees, charges, or rates described in this Agreement.

(b) *New Programs or Services.* City may institute new programs or services which Franchise cannot provide within the established rate structure without economic hardship.

(c) *Negotiation.* In the event that Franchisee contends Franchisee is entitled to a Special Circumstances Adjustment due to (i) extraordinary circumstances beyond Franchisee's control, or (ii) due to new programs and services requested by City as provided herein, Franchisee shall provide documentation and analysis to the satisfaction of City of the reasons for such adjustment. The Parties may make changes in the service levels under the Franchise sufficient to avoid the need for a rate adjustment and Proposition 218 hearing. If the Parties reach agreement on such adjustment, a Proposition 218 hearing shall be held as provided hereunder before such adjustment may take effect.

## **9.5 Proposition 218 Compliance.**

9.5.1 Compliance with Proposition 218 Required. Increases to the Maximum Rate Schedule or any other fee, charge, or rate in this Agreement are strictly subject to the assent of the City and compliance with Proposition 218. If the rates initially proposed exceed the City's current rates, then a Proposition 218 hearing must be conducted before the initial rates bid by Franchisee may become effective.

9.5.2 Proposition 218 Compliance After Five Years. In compliance with Government Code § 53756, notwithstanding the provisions of Section 9.3 permitting adjustment to the Maximum Permissible Rates, no increase in the fees, charges, or rates described in this Agreement, including the Maximum Rate Schedule, shall be allowed or occur more than five (5) years from the date of the most recent Proposition 218 approval pertaining to that fee or charge. If requested by Franchisee, City after five (5) years, may conduct a Proposition 218 hearing to extend the provisions of Section 9.3.1 permitting adjustments to the Maximum Permissible Rates (the "5 Year Hearing").

9.5.3 City Not Obligated to Approve Increase. Franchisee acknowledges that California law under Proposition 218 places limits upon rates and increases in rates for property-related fees and further acknowledges that nothing herein constitutes a guaranty that service rates will be increased. Pursuant to Proposition 218, a majority protest of affected owners may bar the assessment of the new rates. (Cal. Const. Art. XIID, Sec. 4(e); Govt. Code § 53753(e)(3).) At such hearing City has no legal obligation to accept any fee, charge, or rate adjustment proposed by Franchisee or to reapprove any fee, charge or rate adjustment due to the passage of time, such as by operation of Government Code § 53756. Accordingly, whether or not a majority protest exists, the City Council is completely free within its police powers to exercise its discretion in considering such matters, and the City pursuant to this franchise has not contracted away any of its police powers or duties to protect the public health, safety or general welfare of its citizens pursuant to State and Federal law. Furthermore, in no case will City's failure to comply with any notice, hearing or other procedural requirement required by law for the approval of any specific fee, charge or rate adjustment be a default hereunder, and City bears no liability to Franchisee for any damages suffered by Franchisee as a result of any such failure, including any delay, need for a new hearing or rehearing, or finding that an approved fee, charge or rate is invalid. In the event

City does not approve an increased in rates following a Proposition 218 hearing Franchisee's rights shall be governed by Section 9.6.

## **9.6 Failure to Approve Rate Increases.**

9.6.1 Rehearing. In the event the City Council holds a Proposition 218 hearing but fails to approve an increase in any fee, charge, or rate in this Agreement, Franchisee shall have the right to request, if such request is made in writing within 30 days following the Proposition 218 hearing, that the City hold a rehearing or new hearing under Proposition 218 at the expense of Franchisee and following all notice and hearing procedures as established by law. If, following the second Proposition 218 hearing, the fee, charge, or rate increase is still not approved, then Franchisee may terminate this Agreement as provided below.

9.6.2 Negotiations. In the event of a failure to approve rate increases, the Parties may elect any of the following: (i) to have Franchisee continue performance of this Agreement (at the current rates and fees), or (ii) to have Franchisee continue performance of the Agreement for at least nine (9) months following and/or during a period of negotiations, during which time the City may solicit other proposals for Solid Waste services or consider other alternatives for meeting the City's Solid Waste needs, or (iii) may re-open negotiations to continue Franchisee's performance hereof (at the then-current rates and fees) including after City's solicitation of other proposals per item (ii) above, for any period mutually agreed-upon by the Parties in writing. Should the Parties elect the third option, the Parties may continue negotiations in an attempt to reach agreement upon, and enact, new increases in service rates subject to the requirements of Proposition 218.

9.6.3 Termination. In the event of termination, Franchisee shall cooperate fully with City and any subsequent contractor to assure a smooth transition of Solid Waste management services. Franchisee's cooperation shall include, but not be limited to, providing operating records needed to service all properties covered by this Agreement and the execution of a temporary agreement for service for a period up to nine (9) months after the end of the Term or written notice of termination for cause in accordance with Section 11.12.

## **9.7 Proposition 218 Process.**

9.7.1 218 Hearing Procedures. Franchisee shall comply with all procedural requirements of Proposition 218 and of City for the conduct of the hearing including the form of notice, the manner of giving notice, identifying who shall receive notice, and the time of notice which shall be at least 45 days before the hearing. The notice shall inform persons in a simple and understandable manner of the proposed increase and how they may exercise their rights of protest.

9.7.2 Pass-Through of Proposition 218 Compliance Costs. Franchisee shall pay for all costs of Proposition 218 compliance, including but not limited to the costs of notices and hearings. Franchisee may, if permitted by law, pass its actual costs of Proposition 218 compliance on to customers through service rates if, and only if, such pass-through is duly noticed and included as part of the service rates adopted through the Proposition 218 process.

9.7.3 Notice of Increases. Franchisee shall give thirty (30) days prior written notice of any duly-adopted rate increases to all customers of the increase before such increase may become effective, similarly as required for notice of billing changes in Section 5.4.4(e).

**9.8 Indemnification.** Franchisee shall indemnify, defend and hold harmless the City, their officers, employees, agents and volunteers, (collectively, indemnitees) from and against all claims, damages, injuries, losses, costs, including demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest fines, charges, penalties and expenses (including attorneys' and expert witness fees, expenditures for investigation, and administration) and costs or losses of any kind whatsoever paid, imposed upon, endured or suffered by or assessed against Franchisee or any of the indemnitees resulting in any form from the City's establishing any fees, charges, or rates for service under this Agreement or in connection with the application of California Constitution Article XIIC and Article XIID to the imposition, payment or collection of rates and fees for services provided by Franchisee under this Agreement. Notwithstanding the foregoing, this indemnity shall not extend to any portion of the rates that is not associated with Franchisee's costs in providing service, such as governmental fees, franchise fees or charges; nor shall it apply to any loss arising directly from the negligence of City, its officers and employees. Nothing herein is intended to imply that California Constitution Articles XIIC or XIID, apply to the setting of rates for the services provided under this Agreement, rather this Section is provided merely to allocate risk of loss as between the Parties.

**9.9 Billing.** Franchisee shall be responsible for all billing and collection. Notice of billing procedures shall be given to all customers pursuant to 5.4.4(e) and annually thereafter. Franchisee shall have procedures for on-line payment, payment by credit card, and similar customer services. Franchisee shall provide itemized bills, clearly showing charges for all classifications of services, including any charges for late payment. All customers, whether Single Family Residential Unit, Multi-Family Residential Unit, or Commercial and Industrial Unit accounts receiving collection services from Franchisee shall be billed by the Franchisee quarterly as follows: for the quarter in which services are rendered, Franchisee shall bill thirty (30) days into the quarter, and the bill shall be due thirty (30) days thereafter. For Single Family Residential Unit accounts receiving collection services from Franchisee, Franchisee shall meet with City to make specific arrangements for commencement of billing.

**9.10 Delinquent Accounts.**

9.10.1 Residential Units. Franchisee shall provide at least three (3) monthly, written notices of delinquency/past-due account status to the occupants of any Residential Unit with a delinquent account and Franchisee shall otherwise make diligent efforts to resolve said account delinquencies, including but not limited to the reasonable use of a collection agency. Further, Franchisee shall be entitled to collect late charges at the rate of 1.5% per month and, in addition, to charge a reasonable rate for the redelivery of containers. Franchisee may use all commercially reasonable and lawful private collection efforts, whether self-directed or contracted, to collect amounts past due and owing from Residential Units, but shall not have the right to cease service to delinquent accounts unless specifically approved by City.

9.10.2 Industrial, Commercial and Multi-Family Residential Unit Accounts. For Commercial, Industrial and Multi-Family Residential Units whose accounts are more than ninety (90) days past due. Franchisee shall otherwise make diligent efforts to resolve said account delinquencies, including but not limited to the reasonable use of a collection agency. Franchisee shall be entitled to collect late charges at the rate of 1.5% per month and, in addition, to charge a reasonable rate for the redelivery of containers. Franchisee may use all commercially reasonable and lawful private collection efforts, whether self-directed or contracted, to collect amounts past due and owing from Industrial, Commercial and Multi-Family Residential Unit Accounts, but shall not have the right to cease service to delinquent accounts unless specifically approved by City.

9.10.3 No Waiver of City Remedies to Address Public Nuisance. Should Franchisee terminate service to any customer in the City, nothing herein waives or supersedes the City's rights to initiate code enforcement action(s) in response to the build-up, long-term stagnation, or misplacement of Solid Waste as a result of said termination of Franchisee's service. In addition, the City and Franchisee shall, at the option of either party, meet and confer in good faith to resolve any matters of public nuisance or Solid Waste build-up that resulted from a termination of service by Franchisee.

## **ARTICLE X ACCOUNTING AND RECORDS.**

10.1 Financial Statements. City's Chief Administrative Officer may elect to review Franchisee's annual financial statements. Franchisee shall have financial statements annually prepared. Within ninety (90) days of a City request, Franchisee shall allow the Chief Administrative Officer, his/her designee or an auditor selected by the City to review copies of the financial statements at the Franchisee's local office (as defined in Section 5.2.1 hereof), or other such mutually-agreeable premises of Franchisee. City and Franchisee agree to use reasonable efforts to protect the confidential nature of the Franchisee's financial statements.

10.2 Inspection of Franchisee's Accounts and Records. Franchisee's records of customer complaints, AB 939 compliance records, maps, billing records, gross income, franchise fee payments, curbside recycling payments, and customer payment histories shall be available at the Franchisee's principal office as set forth in Section 5.2.1 at any time during regular business hours for inspection on twenty-four (24) hours notice, and/or performance of financial review of Franchisee's records by the City or its duly authorized representative in accordance with the Agreed Upon Procedures (as such term is associated with standard audit procedures), for a period of five (5) years following the close of the Franchisee's fiscal year. Franchisee shall provide City with a copy of any requested record at no cost to City.

10.3 Cost of Agreed Upon Procedures. The cost of the annual Agreed Upon Procedure of Franchisee's books and records is compensated through the Performance Audit Program Fee paid annually to the City by the Franchisee. This Performance Audit Program Fee is also payment for reasonably expected City costs to review Franchisee's request for an increase in rates under the Maximum Rate Schedule. Should the City's performance of an Agreed Upon Procedure disclose that a requested rate increase contains any inaccurate data or cost claims that

are not properly substantiated, the Franchisee will be responsible to reimburse the City for all costs incurred to correct data submissions or substantiate cost claims.

**10.4 Payments and Refunds.** Should the performance of an Agreed Upon Procedure by the City disclose that any City fee payable by the Franchisee was underpaid or that customers were overcharged for the period under review, Franchisee shall pay to City any underpayments and/or refund to Franchisee's customers any overcharges within 15 days of a City issued notice. Should the performance of an Agreed Upon Procedure by the City disclose that any City Fees were overpaid, City shall promptly refund to Franchisee the amount of the overpayment.

## **ARTICLE XI ENFORCEMENT OF AGREEMENT.**

**11.1 City Right to Terminate.** The City shall have the right to terminate Franchisee's franchise and this Agreement upon Franchisee's breach of any of its obligations under this Agreement. The City's right to terminate shall be in addition to any other remedy provided in this Agreement or provided by law and shall include, but not be limited to, any of the events of default set forth in this Article X. In addition, specific events of default by Franchisee include, without limitation, the following:

- (a) If Franchisee practices, or attempts to practice, any willful fraud or deceit upon the City.
- (b) Should the Franchisee or any of its officers, directors, shareholders, subsidiaries, affiliates, employees or agents be or have been found guilty of felonious conduct, illegal transport or disposal of Hazardous Waste, or bribery of public officials, the City reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it shall deem proper. The term "found guilty" shall be deemed to include any judicial determination of guilt including, but not limited to, pleas of "guilty", "nole contendere", "no contest" or "guilty to a lesser charge" entered as part of a plea bargain.
- (c) If Franchisee fails to provide or maintain in full force and effect the workers' compensation or any other insurance coverage or performance bond required by this Agreement.
- (d) If Franchisee willfully violates any orders or rulings of any regulatory body having jurisdiction over Franchisee, provided that Franchisee may reasonably contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.
- (e) If Franchisee fails to make any payments or to pay any penalties required to be made or paid by Franchisee pursuant to this Agreement, including, without limitation, liquidated damages as described in Section 11.13.6.

(f) If Franchisee for any reason ceases to provide Solid Waste management services as required under this Agreement over all or a substantial portion of its franchise area for a period of thirty (30) days.

(g) If Franchisee fails to meet the service performance standards of this Agreement, or violates the terms, conditions or requirements of the Municipal Code or AB 939 or successor legislation, or the City's Storm Water Program as they may be amended from time to time, or violates any order, directive, rule or regulation issued pursuant to the foregoing legislation, where the violation is not remedied within the time set in the written notice of the violation.

(h) If Franchisee refuses to provide City with required information, reports or test results in a timely manner as required by this Agreement.

(i) If Franchisee becomes insolvent, unable or unwilling to pay its debts, or upon the appointment of a receiver to take possession of all or substantially all of the assets of Franchisee, or upon a general assignment by Franchisee for the benefit of creditors, or upon any action taken by or suffered by Franchisee under any insolvency or bankruptcy act.

(j) If Franchisee fails to meet the Waste Diversion requirements of this Agreement or AB 939.

(k) Any similar failure to comply with the requirements of this Agreement.

**11.2 Rights of Nondefaulting Party after Default.** The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a default or to enforce any covenant or agreement herein. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief for a default ("Nondefaulting Party") shall comply with the notice and cure provisions below.

**11.3 Notice of Default and Opportunity to Cure.** A Nondefaulting Party in its discretion may elect to declare a default under this Agreement in accordance with the procedures hereinafter set forth for any failure or breach of the other Party ("Defaulting Party") in its performance of a material duty or obligation of said Defaulting Party under the terms of this Agreement. However, the Nondefaulting Party must provide written notice to the Defaulting Party setting forth the nature of the breach or failure and the actions, if any, required by Defaulting Party to cure such breach or failure ("Default Notice"). The Defaulting Party shall be deemed in "default" under this Agreement, where: (i) said breach or failure can be cured, but the Defaulting Party has failed to fully cure within thirty (30) days after the date of the Default Notice (subject to the provisions below), or (ii) a monetary default remains uncured for ten (10) days (or such lesser time as may be specifically provided in this Agreement).

**11.4 Non-Monetary Defaults; Longer Cure Period.** The Defaulting Party on a non-monetary default shall not be deemed in breach of this Agreement, and such default shall be waived, if such non-monetary default cannot reasonably be cured within the above-prescribed thirty-day period, and as long as the Defaulting Party does each of the following:

(a) Notifies the Nondefaulting Party in writing with a reasonable explanation as to the reasons the asserted default is not curable within the thirty (30) day period;

(b) Notifies the Nondefaulting Party of the Defaulting Party's proposed cause of action to cure the default;

(c) Promptly commences to cure the default within the thirty (30) day period;

(d) Makes periodic reports to the Nondefaulting Party as to the progress of the program of cure; and

(e) Diligently prosecutes such cure to completion.

**11.5 Termination Upon Default.** Upon receiving a Default Notice, should the Defaulting Party fail to timely cure any default, or fail to diligently pursue such cure as prescribed above, the Nondefaulting Party may, in its discretion, provide the Defaulting Party with a written notice of intent to terminate this Agreement and other Agreements ("Termination Notice"). The Termination Notice shall state that the Nondefaulting Party will elect to terminate this Agreement and will describe the evidence upon which the decision to terminate is based. Once the Termination Notice has been issued, the Nondefaulting Party's election to terminate Agreements will only be waived if the Defaulting Party fully and completely cures all defaults prior to the date of termination.

**11.6 Franchisee Hearing Opportunity Prior to Termination.** If Franchisee is the Defaulting Party, then the City's Termination Notice to Franchisee shall additionally specify that Franchisee has the right to a hearing prior to the City's termination of any Agreements ("Termination Hearing"). The Termination Hearing shall be scheduled as an open public hearing item at a regularly-scheduled City Council meeting within thirty (30) days of the Termination Notice, subject to any legal requirements including but not limited to the Ralph M. Brown Act, Government Code Sections 54950-54963. At said Termination Hearing, Franchisee shall have the right to present evidence to demonstrate that it is not in default and to rebut any evidence presented in favor of termination. Based upon substantial evidence presented at the Termination Hearing, the Council may, by adopted resolution, act as follows:

(a) Decide to terminate this Agreement; or

(b) Determine that Franchisee is innocent of a default and, accordingly, dismiss the Termination Notice and any charges of default; or

(c) Impose conditions on a finding of default and a time for cure, such that Franchisee's fulfillment of said conditions will waive or cure any default.

Findings of a default or a conditional default must be based upon substantial evidence supporting the following two findings: (i) that a default in fact occurred and has continued to exist without timely cure, and (ii) that such default has, or will, cause a material breach of this Agreement and/or a substantial negative impact upon public health, safety and welfare, the environment, the City or the financial terms established in this Agreement.

**11.7 Penalty for Monetary Default.** In the event Franchisee fails to perform any monetary obligation under this Agreement, Franchisee shall pay a pre-determined penalty thereon at the rate of one-and-one-half percent (1 1/2%) per month, or any fraction of a month, from and after the due date of said monetary obligation until payment is actually received by City.

**11.8 City's Right to Perform Service.**

11.8.1 City Rights. In addition to any and all other legal or equitable remedies, in the event that Franchisee, for any reason whatsoever, fails, refuses or is unable to collect, transport or deliver to a Disposal Site, as appropriate, any or all Solid Waste or Recyclables which it is required by this Agreement to collect and transport, at the time and in the manner provided in this Agreement, for a period of more than five (5) days, and if, as a result thereof, Solid Waste should accumulate in the City to such an extent, in such a manner, or for such a time that the Chief Administrative Officer in his or her sole discretion should find that such accumulation endangers or menaces the public health, safety or welfare, then the Chief Administrative Officer shall have the right, but not the obligation, without payment to Franchisee, to (i) cause to be performed, such services itself with its own personnel or employ Franchisee's personnel, without liability to Franchisee; and/or (ii) to take possession of any or all of Franchisee's equipment and other property used or useful in the collection and transportation of Solid Waste and to use such property at the expense of Franchisee to collect and transport any Solid Waste which Franchisee would otherwise be obligated to collect and transport pursuant to this Agreement.

11.8.2 Franchisee and City Responsibilities. Franchisee further agrees that in such event:

(a) It will fully cooperate with City to effect the transfer of possession or property to the City for City's use;

(b) It will, if the Chief Administrative Officer so requests, and to the extent feasible, keep in good repair and condition all of such 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; and

(c) The City agrees to assume complete responsibility for the proper and normal use of such equipment and facilities while in its possession.

11.8.3 Franchise Waivers. Franchisee agrees that the City's exercise of its rights under this Article XI:

(a) Does not constitute a taking of private property for which compensation must be paid, but is rather an exercise of the City's police power;

(b) Will not create any liability on the part of City to Franchisee, including but not limited to, any right to compensation for use of Franchisee's equipment;

(c) Does not exempt Franchisee from the indemnity provisions of Article XIII, which are meant to extend to circumstances arising under this Section 11.8, provided that Franchisee is not required to indemnify City against claims and damages arising from the sole negligence of City, its officers, employees, agents, or volunteers acting under this Section 11.8; and

(d) Does not terminate this Agreement, unless termination occurs under other provisions of this Agreement.

**11.9 Duration of City's Possession.** City has no obligation to maintain possession of Franchisee's property and/or continue its use in collecting and transporting Solid Waste for any period of time and may, at any time, in its sole discretion, relinquish possession to the Franchisee. Should the City desire to retain possession of Franchisee's property, the City's right to retain temporary possession, and to provide Solid Waste collection services, shall continue until Franchisee can demonstrate to the Chief Administrative Officer's reasonable satisfaction that it is ready, willing and able to resume such services.

**11.10 Forfeiture of Performance Bond.** In the event Franchisee shall for any reason become unable to, or fail in any way to, perform as required by this Agreement, City may declare that portion of the performance bond established pursuant to Section 13.3 which is necessary to recompense and make whole the City, forfeited to the City. Upon partial forfeiture of the performance bond, Franchisee shall promptly take all steps necessary to restore the performance bond to its face amount.

**11.11 City's Right to Lease Franchisee's Equipment Following Termination.** If City terminates this Agreement for cause, the City shall have the right to lease Franchisee's equipment from Franchisee at its fair market value for a period not to exceed six (6) months in order to allow City to perform the services required under this Agreement.

**11.12 Cooperation Following Termination.** At the end of the Term or Franchise Term or in the event this Agreement is terminated for cause prior to the end of the Term or Franchise Term, or terminated by Franchisee as a result of a Proposition 218 impasse, as described in Section 9.4.3, Franchisee shall cooperate fully with City and any subsequent contractor to assure a smooth transition of Solid Waste management services. Franchisee's cooperation shall include, but not be limited to, providing operating records needed to service all properties covered by this Agreement and to temporarily extend services under this Agreement at the then prevailing rates for service for a period up to one year after the end of the Term or written notice of termination for cause.

**11.13 Remedies for Nuisance Violations.**

11.13.1 Liquidated Damages. The provision of poor public service or the production of any nuisance condition will subject Franchisee to administrative procedures, potential liquidated damages and, ultimately, termination, for severe and repeated violations.

11.13.2 Complaints. Public complaints (whether received by the City regarding Franchisee's performance or received directly by Franchisee) will be handled as prescribed in Section 5.2 hereof.

11.13.3 Nuisance Conditions. Repeated, substantiated complaints of, or continued conditions of, poor service quality and/or nuisance conditions may be handled in the manner prescribed below. For purposes of this Section, the term "nuisance conditions" shall include, but is not limited to, the following:

- (a) Failure to duly collect Solid Waste or Recyclables that have been properly set-out for collection through the willful or negligent conduct of Franchisee employees;
- (b) Uncured damage to the property of third parties or customers through the willful or negligent conduct of Franchisee employees;
- (c) Legitimate complaints of rude or unprofessional behavior or conduct by Franchisee's employees in the course of their duties;
- (d) Failure to perform service surveys and route audits as required by Sections 5.2.7 and 5.2.8, respectively, hereof;
- (e) Unreasonable leakage or spillage of Solid Waste or other collected materials from Franchisee's vehicles;
- (f) Failure to immediately or promptly collect Solid Waste or other materials that spilled or fell from Franchisee's vehicles onto public streets or third-party property;
- (g) Poor maintenance of Franchisee's vehicles in violation of Sections 7.1 and 7.2 hereof;
- (h) Violations of personnel standards and qualifications in contravention of Section 7.4 hereof.
- (i) Any similar failure to comply with the requirements of this Agreement.

11.13.4 Notice of Violation. Initially, when the Planning Director or a designated enforcement officer observes a violation, a verbal warning shall be given to the Franchisee. If the violation is thereafter repeated and, in the opinion of the City's Planning Director or designated enforcement officer, Franchisee has not taken timely, effective action to correct the violation and prevent its repetition, then the Planning Director or designated enforcement officer may issue a written notice of violation (the "Notice of Violation") describing the violation, the period in which Franchisee is required to cure the violation (if such violation is curable) and a warning that continued violations can be subject to liquidated damages.

11.13.5 Franchisee's Right To Contest. Within five (5) business days after receiving the Notice of Violation, Franchisee may submit a written response (the "Response") to the Notice of Violation to the Planning Director. The Planning Director shall review Franchisee's Response and may further investigate the claimed violation. The Planning Director shall make a final determination regarding the Notice of Violation and the Planning Director shall deliver to Franchisee a written conclusion concerning the Notice of Violation. Additionally, at the election

of either Party, the Parties may meet to develop a written corrective action plan ("Correction Plan") to prevent further occurrence of the problematic conditions established in the Notice of Violation. The Correction Plan shall be finally prepared by the City (or, at the election of the City, by Franchisee) within ten (10) business days after the meeting between the Planning Director and/or Chief Administrative Officer designee and Franchisee. The Correction Plan may include additional procedures, as deemed necessary by the Planning Director and/or Chief Administrative Officer designee, to assure that in the future Franchisee will be able to perform its services in compliance with this Agreement.

11.13.6 Liquidated Damages. If a second Notice of Violation is issued for any violation *after* an initial verbal warning and thereafter the issuance of a written Notice of Violation that is not withdrawn pursuant to Subsections 10.12.3 or 10.12.4 above, then liquidated damages may thereafter be assessed against Franchisee (as liquidated damages and not a penalty) by the Planning Director and/or Chief Administrative Officer designee in the amount of \$250 for every day the condition persists. Further, if the violation for which liquidated damages were assessed recurs on three (3) or more days within a 60-day period following any assessment of liquidated damages, then starting on the fourth (4th) day that such violation either persists or recurs the amount of liquidated damages shall increase to \$500 per day.

11.13.7 Basis for Liquidated Damages. The Parties further recognize that if Franchisee recurrently fails to prevent and remediate nuisance conditions, the 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 and its citizens will suffer. Therefore, the Parties agree that the liquidated damages established herein represent a reasonable estimate of the amount of such damages for such specific violations, 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 these liquidated damage provisions prior to entering this Agreement.

Franchisee's Initials 

City Initials 

11.13.8 Further Remedies For Severe Or Persistent Violations. The above provisions for a Correction Plan procedure and liquidated damages are intended to give the Parties a remedy under this Agreement short of termination or default; however, should Franchisee's violations be severe and repetitive or otherwise not reasonably subject to correction through liquidated damages, the Planning Director may, in his sole discretion, institute the default procedures set forth in this Article.

11.14 No Waiver Of City's Police Powers Or Legal Rights. Nothing in this Agreement is intended to limit the power and ability of the City or any LEA to initiate administrative and/or judicial proceedings for the abatement of nuisance conditions or violations of any applicable law. Nothing herein shall waive or limit any other legal rights or recourses the City may have in response to Franchisee's repeated, material violations of performance standards or failure to mitigate nuisance conditions.

**11.15 Attorneys' Fees.** If either Party to this Agreement is required to initiate or defend or is 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 reasonable attorneys, fees and expert witness fees.

**11.16 Rights and Remedies are Cumulative.** Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**11.17 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**11.18 Jurisdiction and Venue.** The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this Agreement. The Parties further agree that Los Angeles County, California is the proper place for venue as to any such litigation arising out of the Agreement and Franchisee agrees to submit to the personal jurisdiction of such court in the event of such litigation.

**11.19 Rights of Non-Defaulting Party after Default.** The Parties acknowledge that both Parties shall have hereunder all legal and equitable remedies as provided by law following the occurrence of a Default or to enforce any covenant or agreement herein except as provided in Section 13.2 below. Before this Agreement may be terminated or action may be taken to obtain judicial relief the Party seeking relief ("Non-Defaulting Party") shall comply with the notice and cure provisions of this Article XI. In this Agreement, the rights of enforcement are limited as the remedy of monetary damages is not available to either Party. The Parties shall have the equitable remedies of specific performance, injunctive and declaratory relief, or a mandate or other action determining that the City has exceeded its authority, and similar remedies, other than recovery of monetary damages, to enforce their rights under this Agreement. The Parties shall have the right to recover their attorney fees and costs pursuant to Section 11.15 in such action. Moreover, the Developer shall have the right to a public hearing before the City Council before any default can be established under this Agreement, as provided in this Article.

## **ARTICLE XII TRANSFERS OF INTEREST.**

**12.1 Restrictions on Transfers.** The City, in entering into this Agreement, has placed a special value, faith and confidence in the experience, background, and expertise of the Franchisee in the field of waste disposal. Such faith and confidence being a substantial consideration in the granting of this Agreement warrants the transfer restrictions provided in this Article XI.

**12.2 Definition of Transfer.** As used in this Section, the term "Transfer" shall include any hypothecation, mortgage, pledge, or encumbrance of this Agreement by Franchisee, subject to the exceptions set forth in Section 12.4 below. A Transfer shall also include the transfer to any

person or group of persons acting in concert of more than thirty percent (30%) of the present equity ownership and/or more than thirty percent (30%) of the voting control of Franchisee (jointly and severally referred to herein as the "Trigger Percentages"), taking all transfers into account on a cumulative basis, except transfers of such ownership or control interest to an affiliate owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family. A transfer of interests (on a cumulative basis) in the equity ownership and/or voting control of Franchisee in amounts less than Trigger Percentages shall not constitute a Transfer subject to the restrictions set forth herein. In the event Franchisee or its successor is a corporation or trust, such Transfer shall refer to the transfer of the issued and outstanding capital stock of Franchisee, or of beneficial interests of such trust; in the event that Franchisee or any general partner comprising Franchisee is a limited or general partnership or a limited liability company, such Transfer shall refer to the transfer of more than the Trigger Percentages in the limited or general partnership or limited liability company interest; in the event that Franchisee or any general partner is a joint venture, such Transfer shall refer to the transfer of more than the Trigger Percentages of such joint venture partner, taking all transfers into account on a cumulative basis.

**12.3 Transfers Require Approval.** Franchisee shall not Transfer this Agreement or any of Franchisee's rights hereunder, directly or indirectly, voluntarily or by operation of law, except as provided below, without the prior written approval of City, and if so purported to be transferred, the same shall be null and void. Franchisee will submit its request for City consent to the City together with documents, including but not limited to: (i) the transferee's audited financial statements for at least the immediately preceding three (3) operating years; (ii) proof that the proposed transferee has municipal solid waste management experience on a scale equal to or exceeding the scale of operations conducted by Franchisee; (iii) proof that in the last five (5) years, the proposed transferee has not suffered any citations or other censure from any Federal, State, or local agency having jurisdiction over its waste management operations due to any significant failure to comply with Federal, State, or local waste management law and that the transferee has provided the City with a complete list of such citations and censures; (iv) proof that the proposed transferee has at all times conducted its operations in an environmentally safe and conscientious fashion; (v) proof that the proposed transferee conducts its municipal solid waste management practices in accordance with sound waste management practices in full compliance with all Federal, State, and local laws regulating the collection and disposal of waste, including hazardous waste; (v) proof that the transferee's officers or directors have no criminal convictions for fraud, deceit, false claims or racketeering with respect to the transferee's course of business; and (vi) any other information required by the City to ensure the proposed transferee can fulfill the terms of this Agreement, including the payment of indemnities and damages and provision of bonds and/or performance standards, in a timely, safe, and effective manner.

**12.4 Exceptions.** The requirement to obtain City approval for a Transfer shall not apply to any of the following:

(a) Any mortgage, deed of trust, sale/lease-back, or other form of conveyance for financing and any resulting foreclosure therefrom.

(b) A sale or transfer resulting from or in connection with a reorganization as contemplated by the provisions of the Internal Revenue Code of 1986, as amended or otherwise, in which the ownership interests of a corporation are assigned directly or by operation of law to a person or persons, firm or corporation which acquires the control of the voting capital stock of such corporation or all or substantially all of the assets of such corporation.

(c) A sale or transfer to an affiliate of Franchisee owned or controlled by the present beneficial owners of Franchisee or members of their immediate family, or between members of the same immediate family, or transfers to a trust, testamentary or otherwise, in which the beneficiaries are limited to members of the transferor's immediate family.

**12.5 Assumption of Obligations.** No attempted Transfer of any of Franchisee's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assumption agreement in a form approved by the City assuming such obligations. Following any such assignment or Transfer of any of the rights and interests of Franchisee under this Agreement, the exercise, use and enjoyment shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were Franchisee.

**12.6 Release of Franchisee.** City's consent to a Transfer shall not be deemed to release Franchisee of liability for performance under this Agreement unless such release is specific and in writing executed by City, which release shall not be unreasonably withheld. Upon the written consent of City to the complete assignment of this Agreement and the express written assumption of the assigned obligations of Franchisee under this Agreement by the assignee, Franchisee shall be relieved of its legal duty from the assigned obligations under this Agreement, except to the extent Franchisee is in default under the terms of this Agreement prior to said Transfer.

**12.7 Franchisee to Pay Transfer Costs.** Franchisee will pay City its reasonable expenses for attorneys' fees and investigation costs necessary to investigate the suitability of any proposed transferee or assignee, and to review and finalize any documentation required as a condition for approving any such Transfer.

**12.8 Subcontracting.** This Agreement, or any portion thereof, shall not be subcontracted except with the prior written consent of the City. No such consent shall be construed as making the City a Party to such subcontract, or subject the City to liability of any kind to any subcontractor. Franchisee shall submit all subcontracts for review and approval by the City and any permitted subcontract shall terminate on or before the termination of this Agreement. All subcontractors shall be licensed as required under State, Federal and local laws and regulations to perform their subcontracted work and obtain and maintain a City business license if required. Franchisee shall remain otherwise liable for the full and complete performance of its obligations hereunder.

**12.9 Heirs and Successors.** The terms, covenants and conditions of this Agreement shall apply to and shall bind the heirs, successors, executors, administrators and assigns of the Franchisee and City.

**ARTICLE XIII**  
**INSURANCE, INDEMNITY AND PERFORMANCE BOND.**

**13.1 Insurance.** Franchisee shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance:

13.1.1 Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance written on a per occurrence basis. The policy of insurance shall be in an amount not less than either (i) a combined single limit of \$2,000,000.00, or (ii) bodily injury limits of \$1,000,000.00 per person, \$2,000,000.00 per occurrence and \$1,000,000.00 products and completed operations and property damage limits of \$2,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.

13.1.2 Workers' Compensation Insurance. A policy of workers' compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Franchisee and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Franchisee in the course of carrying out the work or services contemplated in this Agreement.

13.1.3 Automotive Insurance. A policy of comprehensive automobile liability insurance written on a per occurrence basis in an amount not less than either (i) bodily injury liability limits of \$1,000,000.00 per person and \$2,000,000.00 per occurrence and property damage liability limits of \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate or (ii) combined single limit liability of \$2,000,000.00. Said policy shall include coverage for owned, non-owned, leased and hired cars.

13.1.4 Umbrella Insurance. Umbrella coverage to bring total aggregate insurance coverage for all underlying insurance coverage to TWENTY MILLION DOLLARS (\$20,000,000.00)

13.1.5 General Insurance Provisions. All of the above policies of insurance shall be primary insurance and shall name the City, its officers, employees, and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice by registered mail to the City. In the event any of said policies of insurance are cancelled, the Franchisee shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 13.1 to the Chief Administrative Officer. No work or services under this Agreement shall commence until the Franchisee has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverage and said Certificates of Insurance or binders are approved by the City.

13.1.6 No Limitation. Franchisee agrees that the provisions of this Article 12 shall not be construed as limiting in any way the extent to which the Franchisee may be held responsible for the payment of damages to any persons or property resulting from the

Franchisee's activities or the activities of any person or persons for which the Franchisee is otherwise responsible.

13.1.7 Rating. The insurance policies required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California rated All or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class IV or better, unless such requirements are waived by the Chief Administrative Officer of the City.

13.1.8 Primary Insurance. The insurance policies shall be considered primary insurance as respects any other valid and collectible insurance the City may possess including any self-insured retention the City may have, and any other insurance the City does possess shall be considered excess insurance and shall not contribute with it. The insurance policies shall act for each insured, as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company.

13.1.9 Changes in Market. In the event the Chief Administrative Officer determines that (i) the market conditions creates an increased or decreased risk of loss to City, (ii) greater insurance coverage is required due to the passage of time or (iii) changes in the insurance industry require different coverages be obtained, Franchisee agrees that the minimum limits of any insurance policy required to be obtained by Franchisee may be changed accordingly upon receipt of written notice from the Chief Administrative Officer.

**13.2 Indemnification**. Without regard to the limits of any insurance coverage, Franchisee agrees to indemnify, defend with counsel appointed by the City, protect and hold harmless the City, its representatives, officers, agents and employees against any and all fines, response costs, assessments, actions, suits, injunctive relief, claims, damages to persons or property, losses, costs penalties, obligations, errors, omissions or liabilities, ("claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with (i) violations of the commerce clause of the U.S. Constitution, AB 939, the Comprehensive Environmental Response, Compensation and Liability Act, Title 42 U.S.C. §9601 *et seq.* ("CERCLA"), HSAA, RCRA, any other Hazardous Waste laws, or other Federal, State or local environmental statutes, ordinances and regulations which arise from this Agreement; (ii) the negligent performance of the work or services of Franchisee, its agents, employees, subcontractors, or invitees, provided for in this Agreement; (iii) the negligent acts or omissions of Franchisee hereunder, or arising from Franchisee's negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, whether or not there is concurrent passive or active negligence on the part of the City, its representatives, officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its representatives, officers, agents or employees, who are directly responsible to the City, and in connection therewith:

(a) Franchisee will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Franchisee will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work or services of Franchisee hereunder; and Franchisee agrees to save and hold the City, its officers, agents and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Franchisee for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work or services of Franchisee hereunder, Franchisee agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Franchisee's obligations hereunder under this Section and Section 13.4, and Article XIII generally, shall survive the termination or expiration of this Agreement

**13.3 Performance Bond.** The City requires the Franchisee to delivered to the City a performance bond in the sum of the amount of ONE MILLION DOLLARS (\$1,000,000.00), in the form provided by the Chief Administrative Officer. Said performance bond shall guarantee Franchisee's faithful performance of waste hauling services under the auspices 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 be unconditional and remain in force during the entire term of this Agreement and shall be null and void only if the Franchisee promptly and faithfully performs all terms and conditions of this Agreement. The performance bond must be issued by a surety meeting the requirements of Section 13.1.7.

**13.4 AB 939 Guarantee and Indemnification.** Without in any way limiting the indemnification provisions in Section 13.2 above, Franchisee unconditionally guarantees compliance with the requirements AB 939 as amended from time to time. Franchisee shall carry out its obligations under this Agreement so that the City will meet or exceed the diversion requirements set forth in AB 939, and all amendments thereto, as more fully set forth below. City and Franchisee shall reasonably assist each other to meet the City's AB 939 diversion requirements. In carrying out the provisions of this Section, Franchisee agrees to perform the following obligations at its cost and expense:

(a) Defend, with counsel approved by City, indemnify and hold harmless the City against all fines and/or penalties imposed by the Board, if Franchisee fails or refuses to provide information relating to its operations which is required under this Agreement and such failure or refusal prevents or delays City from submitting reports required by AB 939 in a timely manner;

(b) Assist City in preparing for, and participating in, the Board's biannual review of the City's source reduction and recycling element pursuant to Public Resources Code Section 41825;

(c) Assist City in responding to inquires from the Board in applying for an extension under Public Resources Code Section 41820, if so directed by City; in conducting any hearing conducted by the Board relating to AB 939; or in any other investigative or enforcement manner undertaken by any agency;

(d) Defend, with counsel acceptable to City, and Indemnify and hold harmless the City against any fines or penalties levied against it for violation of AB 939's diversion requirements, excepting any fine or penalty imposed if City's failure to meet the Act's diversion requirements is the result of an order.

(e) In cooperating with the City, should it seek to become its own enforcement agency, to the extent it may be permitted under State law.

**13.5 Education Programs.** Franchisee and City shall jointly develop and implement a public awareness and education program that is consistent with the City's Source Reduction and Recycling Element and its Household Hazardous Waste Element and also the City's Stormwater Program

#### **ARTICLE XIV GENERAL PROVISIONS.**

**14.1 Late Payment Fee.** City shall give Franchisee written notice of any delinquent payment of any sum owing to City by Franchisee under this Agreement. In the event that Franchisee does not pay City such delinquent sum within ten (10) days of the date of the written notice, Franchisee shall pay the City the pre-determined penalty of one and one-half percent (1.5%) interest per month, or any fraction of a month, on the amount of delinquent sum commencing from the date such sum was originally due.

**14.2 Force Majeure.** The time period(s) specified for performance of the provisions of this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Franchisee, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Franchisee shall within ten (10) days of the commencement of such delay notify the Chief Administrative Officer in writing of the causes of the delay; no extension of time for performance shall be granted, however, by reason of the unavailability of any Disposal Site or by reason of strikes, lockouts, or other labor disturbances, or breakage or accidents to vehicles, equipment, machinery or plants. The Chief Administrative Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Chief Administrative Officer such delay is justified. In no event shall Franchisee be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Franchisee's sole remedy being extension of the Agreement pursuant to this Section 14.2.

**14.3 Notices.** All notices, demands, requests, approvals, disapprovals, proposals, consents, or other communications whatsoever which this Agreement contemplates or authorizes, or requires or permits either Party to give to the other, shall be in writing and shall be

personally delivered, sent by telecopier or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective Party as follows:

If to Franchisee: Consolidated Disposal service  
12949 Telegraph Road  
Santa Fe Springs, CA 90670

If to City: CITY OF BELL  
Chief Administrative Officer  
6330 Pine Avenue  
Bell, CA 90201

A copy to: ALESHIRE & WYNDER, LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
Attention: David J. Aleshire, City Attorney

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this Section 14.3. Notice shall be deemed effective on the date personally served or by facsimile or, if mailed, three (3) days from the date such notice is deposited in the United States mail.

**14.4 Non-discrimination.** Franchisee covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin, sexual orientation, or ancestry in the performance of this Agreement. Franchisee shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation, national origin or ancestry.

**14.5 Compliance with Immigration Laws.** Franchisee agrees that, in the performance of this Agreement, it will comply with all applicable immigration laws and regulations.

**14.6 No Liability of City Officials.** No officer, employee or agent of the City shall be personally liable to the Franchisee, or any successor in interest, in the event of any default or breach by the City or for any amount that may become due to the Franchisee or to its successor, or for breach of any obligation of the terms of this Agreement.

**14.7 Laws and Regulations.** Franchisee shall observe all the terms of any City ordinance or resolution now in effect, or as the same may be subsequently adopted or amended by the City, governing or affecting the collection, removal and disposal of Municipal Solid Waste in the City of Bell. Franchisee further agrees to comply with all applicable county, State or Federal laws or regulations as they exist now or may subsequently be adopted or amended, governing the collection, removal and disposal of Municipal Solid Waste. Franchisee further agrees to comply with all applicable State and Federal laws governing employment, wages, working conditions, use of materials, equipment, supplies and the like.

**14.8 Proprietary Information: Public Records.** The City acknowledges that a number of the records and reports of the Franchisee are proprietary and confidential. Franchisee is obligated to permit City inspection of certain of its records, as provided herein, on demand and to provide copies to City where requested. City will endeavor to maintain the confidentiality of all proprietary information provided by Franchisee and shall not voluntarily disclose such proprietary information. Notwithstanding the foregoing, any documents provided by Franchisee to City that are public records may be disclosed pursuant to a proper public records request.

**14.9 Waiver of Future Claims.** No delay or omission in the exercise of any right or remedy by a nondefaulting Party on any default shall impair such right or remedy or be construed as a waiver. A Party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

**14.10 Conflict of Interest.** No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Franchisee warrants that it has not paid or given and will not pay or give any officer, employee or agent of the City any money or other consideration for obtaining this Agreement.

**14.11 Interpretation.** The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

**14.12 Integration: Amendment.** It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. This Agreement may only be amended at any time by the mutual consent of the Parties by an instrument in writing. This Agreement is intended, in part, to carry out City's obligations to comply with the provisions of AB 939 and regulations promulgated thereunder, as amended from time to time. In the event that AB 939 or other State or Federal laws or regulations enacted after this Agreement prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. No other amendment of this Agreement shall be valid unless in writing duly executed by the Parties.

**14.13 Severability.** In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties

hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

**14.14 No Joint Venture.** Neither the City nor any of its employees shall have any control over the manner, mode or means by which Franchisee, its agents or employees, perform the services required herein, except as otherwise set forth. Franchisee shall perform all services required herein independent from the City and shall remain at all times as to City a wholly independent entity with only such obligations as are consistent with that role. Franchisee shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Franchisee in its business or otherwise or a joint venture or a member of any joint enterprise with Franchisee.

**14.15 Corporate Authorization.** Franchisee has the authority to enter into and perform its obligations under this Agreement. The Board of Directors of Franchisee (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 Franchisee have authority to do so. Entering into this Agreement does not violate any provision of any other Agreement to which Franchisee is bound.

IN WITNESS WHEREOF, the Parties hereto do hereby set their hands and seals as of the day and the year first written above.

**FRANCHISEE**

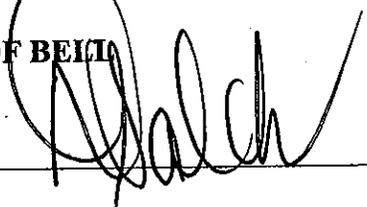
Consolidated Disposal Service, LLC a Delaware Limited Liability Company



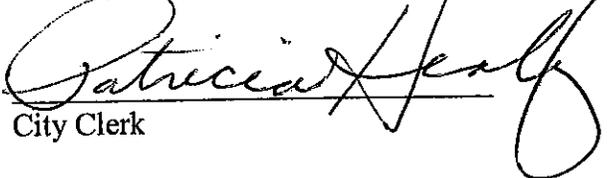
By: Kurt Bratton  
Title: Vice President

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By:  
Title:

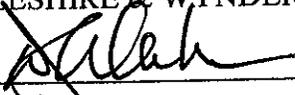
**CITY OF BEILA**

  
By: \_\_\_\_\_, Mayor

ATTEST:

  
City Clerk

APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP

  
\_\_\_\_\_  
City Attorney

## EXHIBITS

Exhibit A – Maximum Rate Schedules

Exhibit B – Not Used

Exhibit C – Approved Work Plan and Methodology

Exhibit D – Good Corporate Citizen Statement

## Diversion Compliance and More

This section affirms Consolidated's understanding of the services to be provided per the City's scope of work outlined in *Attachment A* of the *RFP* and the draft *Agreement*, the collection methodology and facilities Consolidated will employ to accomplish it, and the programs and initiatives Consolidated will utilize to ensure the City's compliance with all recycling legislation.

Consolidated's primary focus in its approach to services is to continue providing highly reliable and efficient services at low rates as customers are now accustomed, and that also meet the City and State diversion objectives.

Consolidated will also continue to act as a good corporate citizen through its participation and support of community events, projects, and worthy causes—as well as through hiring practices that actively seek to recruit Bell residents for open positions.

As per the submission requirements of the *RFP*, actual collection schedules are included in *Section 6*. As described in *Section 2*, there are many benefits of incumbency to the City and Customers should the City re-award this contract to Consolidated.

As noted in *Section 4* and throughout this *Proposal*, the City, its residents, and businesses will benefit tremendously from the infrastructure and experience associated with a contract award to Consolidated. Energy and resources can then be focused on recycling legislation compliance, reporting systems, and program enhancements.

Most importantly, Consolidated can guarantee rate stabilization associated with the processing and disposal components of customer rates because of the unmatched facilities infrastructure Consolidated possesses.

The remainder of this section is organized in the following manner:



*Consolidated's primary focus in its approach to services is to continue providing highly reliable and efficient services at low, sustainable rates as customers are now accustomed, and that also meet City and State diversion objectives.*



### **Residential Service Days – Enhancement**

Currently residential customers receive all collection services on Friday. The City's RFP requests services as part of bidder's *Base Proposal* for Monday through Friday collection, and a premium rate for the provision of Friday only residential collection services. As part of its *Base Proposal*, Consolidated will continue Friday collections at the same low rate. This completely eliminates the potential for customer frustration associated with service day changes, maintains low, stabilized rates, and reduces truck traffic on City streets Mondays through Thursdays.

### **City Facilities**

Consolidated will collect all solid waste, recyclable materials, green waste, and construction and demolition materials from the following City facilities at least once per week, as is currently done, using container types/sizes acceptable to the City and on a schedule approved by the City:

- City Hall (6330 Pine Avenue)
- City Maintenance Yard (5320 Gage Avenue)
- City Community Center (6250 Pine Avenue)

### **Abandoned Waste Collection**

Because this program cuts across all generator types, information on Consolidated's approach is included here. Consolidated will collect and remove at no charge any amount of abandoned bulky waste items dropped in the City's public right-of-way areas, including City parks and other locations. Consolidated will collect these materials within 24 hours of notice by the City or customer.

### **Overflowing Containers**

Consolidated understands it has the right to initiate a process to increase service levels where customers regularly produce more waste than their service level can accommodate. Consolidated, however, intends to take a proactive role in ensuring services are right-sized through the service history it has for each customer combined with initial audits for commercial customers. Initial audits are intended to reduce the potential for container overflow and are necessary in establishing correct levels of recycling collection services for commercial and multi-family customers. These initial audits are described later in this section.

### **Quality of Service Surveys**

As per §5.2.7 of the draft *Agreement*, Consolidated will, at its own expense, conduct a *Quality of Service* survey twice annually in a form and process approved by the City. Consolidated will use the information gleaned from the survey to continually improve its Bell programs.

### **Bin Cleaning and Graffiti Removal**

As is currently the case, immediately upon notification or driver observance of graffiti on any container, Consolidated will exchange the vandalized container with a clean one, and will bring it in for repainting and cleaning.



### Chart A: Residential Service

Note: Consolidated will, to maximize the recycling rebate to the City, strongly promote residential recycling participation through the diversion initiatives described later in this section.

RFP Requirement	Consolidated Approach
Weekly automated <b>solid waste</b> collection services with 95-gallon carts	Already implemented with liquefied natural gas (LNG) automated sideloader collection vehicles listed in <i>Section 8</i> . Consolidated understands that the City will provide new 95-gallon carts and that it is to store a cart inventory of 10% for exchanges at all times.
Smaller sized <b>solid waste</b> containers upon customer request.	Consolidated will service a full range of solid waste containers available to customers for which the Company will charge a reduced fee.
Weekly automated <b>recyclable material</b> collection services with 64-gallon carts.	Already implemented with LNG automated sideloader collection vehicles listed in <i>Section 8</i> . Consolidated understands that the City will provide new 64-gallon carts and that it is to store a cart inventory of 10% for exchanges at all times.
Larger sized <b>recycling</b> containers.	Additional/larger recycling containers are/will be supplied to customers upon request at no additional fee within well within the timeframe specified in the <i>Agreement</i> .
Weekly automated <b>green waste</b> collection services with 64-gallon carts.	Consolidated will provide automated collection services utilizing the liquefied natural gas (LNG) automated sideloader collection vehicles listed in <i>Section 8</i> . Consolidated understands that the City will provide new 64-gallon carts and that it is to store a cart inventory of 10% for exchanges at all times. Holiday trees will be collected through this program free of charge for four weeks beginning December 26 <sup>th</sup> each year of the <i>Agreement</i> .
Larger sized <b>green waste</b> containers.	Additional/larger green waste containers are/will be supplied to customers upon request at no additional fee within well within the timeframe specified in the <i>Agreement</i> .
Curbside Recycling Audits	Consolidated will conduct quarterly waste composition audits at no charge to the City, and will work collaboratively with the City to develop an approach and report format that meets all City requirements.
Temporary bin and roll-off box services.	Already implemented with frontloader (for temporary bin service) and roll-off (for roll-off box service) equipment specified in <i>Section 8</i> . Roll-off service parameters align to contract requirements.
Bulky Item Collection <i>Includes Universal and E-Waste Collection</i>	Currently conducted in exceedance of current contract standards. Consolidated will utilize the equipment listed in <i>Section 8</i> and the approach described in this section to comply with the City's new bulky waste collection program.
Sharps Collection	Consolidated will provide a sharps collection and mail-back kit to all customers requesting such. See additional information in this section.
Backyard Service	Provided to all customers who are physically unable to bring their carts to the curb, free of charge.
<b>Enhancements</b> <i>In exceedance of RFP requirements at no additional cost to the City or customers. These are fully described in the Residential Diversion subsection.</i>	<ol style="list-style-type: none"> <li>1. Curbside household batteries collection program.</li> <li>2. Community shred days.</li> <li>3. Free compost give away or as directed by the City.</li> <li>4. Free community compost and recycling workshops.</li> <li>5. Enhanced good corporate citizen involvement as described in this section.</li> </ol>

<sup>1</sup> Consolidated commits to provide end uses for green waste that maximize diversion credits to the City. See information included in the *Facilities* subsection.



### Chart C: City Services/Other Collection Services

RFP Requirement	Consolidated Approach
City Facilities	Already implemented collection services as included in <i>Attachment A</i> of the City's <i>RFP</i> .
Abandoned Waste Collection	As indicated in the section's introduction, Consolidated will continue to provide this service with the equipment indicated in <i>Section 8 – Equipment List</i> , which meets City parameters for the service as indicated in the <i>RFP</i> . Because of Consolidated's familiarity with the City, the Company has identified challenging areas and gives special attention to these areas. The Company will provide reporting to the City in any format the City desires.
Self-Haul	Consolidated understands that residents and contractors within the City may elect to opt out of services covered under the subject draft <i>Agreement</i> .



- *What do I do with the paperwork that came with my Republic Sharps container?*
- *How full do I fill the Republic Sharps container?*
- *Can I put blood or fluid in the container?*
- *Do I need to put the caps back on the needles?*
- *How long do I have to return the container for disposal?*
- *Can I place my own sharps container into the Republic Sharps return box?*
- *Can I place the Republic Sharps container in my own packaging to return for disposal?*
- *Can I put the manifest tracking document inside of the Republic Sharps container?*
- *How long must the customer manifest tracking document be maintained?*
- *What if the customer manifest papers that came with my Republic Sharps container are lost, misplaced or missing?*
- *Are the Republic Sharps containers approved by the USPS and safe to send in the mail?*
- *Is Republic Sharps Mail Back service available in all 50 states?*
- *Does Republic Sharps allow shipping to countries outside of the United States?*
- *Are there any other regulatory requirements to be aware of?*
- *What should I do if I accidentally threw away my return shipping box?*

The program is comprehensive and easy to use.



## Transfer Station Information

### Bel-Art Transfer Station

2495 E. 65<sup>th</sup> Street  
Long Beach, CA 90805

<p>Guaranteed Capacity: Yes          Consolidated-Owned: Yes          Posted Gate Rate: \$74.73 per ton          Permitted Capacity: 1500 tons per day          Current Throughput: 1300 tons per day          SWIS No: 19-AK-0001  <i>In full compliance with all regulatory agencies and conditions.</i></p>
--

### Bel-Art Transfer Station – Additional Information

This is a fully-permitted and active Large Volume Transfer Station that receives waste from Consolidated franchise jurisdictions and from third parties. The facility is situated on 3.2 acres. The permit allows for receipt of waste 24 hours a day, Monday through Saturday.

### Compton Waste Transfer and Recycling

2509 W Rosecrans Avenue  
Compton, CA 90222

<p>Guaranteed Capacity: Yes          Consolidated-Owned: Yes          Posted Gate Rate: \$71.92 per ton  <i>Price includes processing and disposal.</i>          Permitted Capacity: 1500 tons per day          Current Throughput: 420 tons per day          SWIS No: 19-AA-0048  <i>In full compliance with all regulatory agencies and conditions.</i></p>
---

### Compton Waste Transfer and Recycling – Additional Information

This is a fully-permitted and active Large Volume Transfer Station that receives waste, recyclables, green waste, construction and demolition materials and other materials. The permit allows for receipt of waste between 6 am and 6 pm Monday through Friday, and between 7 am and 1:30 pm on Saturdays. The facility is situated on 3.1 acres.



educational, outreach, and program initiatives begin to shift materials from the trash to recycling and organics waste streams.

Following the materials information listed below, reviewers will find additional facts about CVT and its system upgrades which are being installed now, and will nearly increase throughput capacity to 50 tons per hour; the facility is on schedule for a grand opening of the new installation in January 2012.

A list of acceptable materials follows.

**Recyclable Materials Processed at CVT**

Aerosol cans	Glass Bottles/Jars	Plastic Containers 1-7
Aluminum cans	Juice Cartons	Tin Cans
Aluminum foil	Junk Mail/Coupons	Carpet and Carpet Pad
Bottle caps	Laundry Bottles	Cement
Brochures	Ledger Paper	Plastic Toys/Rigid Plastics
Cardboard	Magazines	Gras/Yard Waste
Cereal Boxes	Metal	Leaves
Computer Paper	Milk Cartons	Prunings
Drink Boxes	Newspaper	Wood
Egg Cartons (cardboard/foam)	Paper Tubes	Electronic Waste
Frozen Food Boxes	Pizza Boxes	Universal Waste

**CVT Regional MRF**





## ENHANCEMENTS SPAN MORE THAN TWO DECADES

1987	1997	1999	2004	2011	2013
Transfer Station	MRF Phase I Single-Stream System	MRF Phase II Commercial System	Green Waste Facility	Modernization Phase I Single-Stream & Eco-Center	Modernization Phase II MSW

### SUSTAINABILITY

- The new single-stream system have more than 180 high efficiency drives, and where appropriate, variable frequency drive (VFD) motors which are shown to reduce energy consumption by 20 to 30 percent. The use of VFDs on processing equipment not only saves energy, but also, by precisely controlling the motor's speed, ensures smooth conveyor operation and improves the material sorting process.
- The SCADA package on the controls system constantly monitors and tracks the various drives in the system so management can optimize the efficiency and energy consumption.
- The automated storage bunkers eliminate the need for loaders to push material into the balers reducing emissions.
- Skylights provide natural light, reducing the need for artificial lighting.

### EMPLOYEES and SAFETY

- **Employees** - The MRF employs nearly 300 people.
- **Shifts** - The MRF runs two shifts, five days-a-week.
- **Health and Safety** - Safety is our number one priority. The facility is planned carefully with safety taken into account in every aspect.
  - Safety programs ensure the safety of our employees and our customers.
  - Workers and visitors are provided with personal protective equipment (PPE).
  - Persons working near and around the balers are required to wear a safety device that will shut off the balers in the event of a safety concern. This safety feature is operated by radio frequency.

### TYPES OF WASTE PROCESSED

- **Municipal Solid Waste (MSW)** - More commonly known as trash or garbage - MSW consists of everyday items we use and then throw away, such as product packaging, grass clippings, furniture, clothing, bottles, food scraps, newspapers, appliances, paint and batteries. This comes from our homes, schools, hospitals and businesses.
- **Single-Stream** - Mixed recyclable materials, e.g., paper, bottles, cans, etc. CVT began processing single-stream waste in 1989, when we implemented our first automated curbside collection programs.
- **C&D** - Construction and demolition debris is made up of building materials such as rock, bricks, metal, concrete and wood, damaged or unused for various reasons during construction.
- **Green Waste** - Green waste is made of things that grow and comes from homes and businesses. Green waste is screened and grounded on site for alternative daily cover, biofuel and compost.
- **White Goods** - Discarded major appliances, such as refrigerators and ranges are brought to us from our collections divisions and the public disposal center. Once at the collection facility, white goods are separated and prepared for safe shipment to a recycling facility.
- **E-waste** - Discarded electrical devices, once at the collection facility are separated and prepared for safe shipment to a recycling facility.





## AWARDS

**2009** - Most Shareholder Friendly Company - Institutional Investor Magazine named Republic Services the most shareholder friendly company in the environmental services category for the 4th consecutive year.

**2009** - Best CFO - Institutional Investor Magazine named Republic CFO, Tod Holmes, Best CFO for the 6th consecutive year.

**2008** - America's 400 Best Big Companies - Fortune.com named Republic Services one of America's 400 Best Big Companies. Republic placed #275

**2006** - Republic Services made the list of Forbes Magazine Platinum 400 - The Best Big Companies in America

**2005** - The Integrated Waste Management Board awarded all nine of our franchise cities with the Resources For The Future Award in recognition of achieving the mandated 50 percent diversion rate.

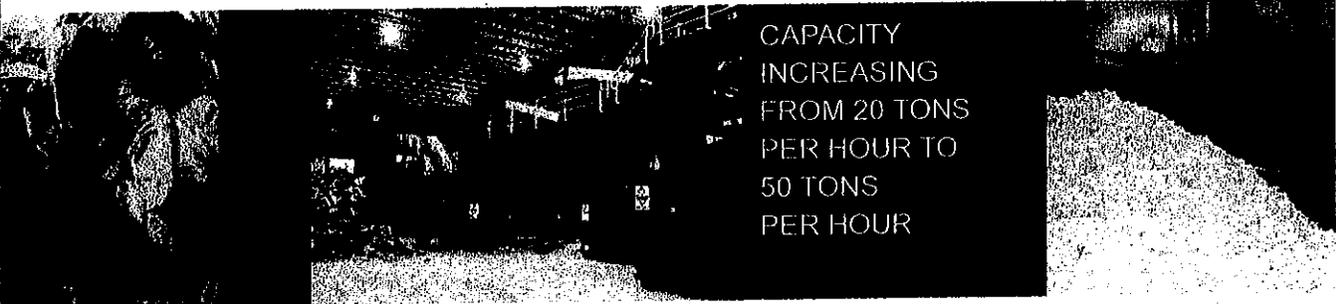
**2004** - Awarded America's Best Managed Companies by Forbes

**2003 & 2004** - Awarded the Western Regional Best Safety Performance Record

**1999** - The Integrated Waste Management Board awarded six of our franchise cities: Anaheim, Brea, Garden Grove, Placentia, Villa Park and Yorba Linda the Certificate of Achievement for implementing programs, which met Assembly Bill 939 mandates for waste diversion.

**1993** - Awarded the SWANA Excellence in Recycling Award

**1992** - CVT Regional Material Recovery Facility received the California Resource Recovery Award for Outstanding Achievement for Material Recovery Facility.



CAPACITY  
INCREASING  
FROM 20 TONS  
PER HOUR TO  
50 TONS  
PER HOUR

## 2011 PROJECT MANAGEMENT

- RRT Design & Construction (RRT)  
125 Baylis Road, Melville, New York Tel: 631-756-1060
- Bulk Handling Systems (BHS)  
3592 West 5th Avenue, Eugene, OR Tel: 541-485-0999

## CONTACT US

CVT REGIONAL MATERIAL RECOVERY FACILITY  
1131 N. Blue Gum Street, Anaheim, CA 92806  
Tel: 714-238-3300 [disposalservices.net](http://disposalservices.net)  
Brenda McGuire, [m McGuire@republicservices.com](mailto:m McGuire@republicservices.com)





BACK TO HOME 

# SUNSHINE CANYON *Landfill*



## Economic and Infrastructure Benefits

- ⤴ About Us
- ⤴ News
- ⤴ Safety
- ⤴ Environment
- ⤴ Community Relations
  - ⤴ Community Advisory Committee
  - ⤴ Economic and Infrastructure Benefits
  - ⤴ Learning Center
- ⤴ Future Plans

At Sunshine Canyon Landfill, we are pleased to provide economic and infrastructure benefits to our community, including:

- **Low-Cost Disposal:** Because we will provide an in-county waste disposal option until the year 2037, County businesses and residents will pay much less than they would for other available options—and it's environmentally safe.
- **Revenue Sharing for City of LA/County of LA:**
  - The County receives a share of the revenue collected from operation on either side of the joint City/County Landfill, as determined by the Revenue-sharing Agreement between the two jurisdictions.
  - The City will receive more than \$150 million in franchise fees over the life of the City/County landfill.
  - Los Angeles County Public Works receives more than \$100,000 annually in support of hazardous waste roundups.
  - The replacement Conditional Use Permit for a combined City/County Landfill did not expand the landfill's footprint, but it allowed Sunshine Canyon to fully use all capacity within the footprint, which will maximize and stabilize revenues to the County and City.
- **Long-Term Disposal and Recycling:** We assist the cities in Los Angeles County in meeting their AB939 requirements by offering long-term disposal capacity and on-site recycling of a variety of items.
- **Traffic Improvements:** To lessen the impact of trucks on commuter traffic, we made traffic improvements at seven sites along the San Fernando Road corridor and Roxford Street. We restriped to provide additional turn lanes, widened roads, relocated power poles, and installed traffic signals, street lights, and installed a sidewalk for pedestrian safety.

Sunshine Canyon Landfill  
 14747 San Fernando Road  
 Sylmar, CA 91342  
 24 Hour Hotline: (800) 926-0607  
 General Information: (818) 833-6500  
 E-mail: info@sunshinecanyonlandfill.com

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Line of Business	Collected	Diverted	Diversion Percentage	Notes
<b>Residential</b>				
Trash	1859	-	0.00	Trash to Bel Art
Trash	925	-	0.00	Trash to Innovative
Trash	5,500	5,500	100.00	5,500 tons to Commerce for transformation via direct haul
Recycling	1,242	992	80.00%	Increased Recy 25% due to low LB/hh-lowered residual to 12% (to CVT via Compton)
Green Waste	898	862	96.00%	Assumes delivery to American Waste Transfer with transload to Falcon @ 4% residual.
Green Waste - Trees	73	70	96.00%	
<b>Totals</b>	<b>10,497</b>	<b>7,426</b>	<b>70.74%</b>	
<b>Commercial</b>				
Trash	10,300	3,404	33.05%	Assumes of 2010 bin waste (net of SS, Recyclables, and inerts) delivered to transfer station. Assumes 15% of MSW will be processed at CVT. Single stream recycling to be determined based on initial waste assessments.
<b>Totals</b>	<b>10,300</b>	<b>3,404</b>	<b>33.05%</b>	
<b>Roll-Off</b>				
Trash	3,259	1,077	33.05%	Assumes 100% of 2010 RO waste (net of SS, Recy, GW inerts) transloaded to Falcon for MRFing.
Green Waste	85	82	96.00%	Assumes delivery to American Waste Transfer; transload to Falcon with 4% residual.
Estimated Inerts	274	219	80.00%	Based on inert tons for 2010 w/assumed 80% diversion; to Falcon via American Waste Transfer.
<b>Totals</b>	<b>3,618</b>	<b>1,378</b>	<b>38.08%</b>	
<b>Grand Totals</b>	<b>24,415</b>	<b>12,208</b>	<b>50.00%</b>	<b>Minimum Diversion Guarantee</b>





## Public Education and Outreach

The objective of this section is to a) convey to the City of Bell Consolidated's competency in developing and managing public education programs; b) relay Consolidated's proposed plan for outreach during the transition period and beyond; and c) illustrate the Company's willingness to become involved in the community as a good corporate citizen.

Not having to focus on implementing basic services due to the benefits of Consolidated's incumbency frees Consolidated and City resources to energize outreach and diversion programs and initiatives to achieve the City's objectives.

Consolidated has templated versions of a wide array of collateral materials that can be tailored to the City's needs, printed, and distributed in time for the City's July 1 start date and/or coordinated with the delivery of the City's new residential carts. All collateral material will be bilingual in English and Spanish and City-approved prior to printing and distribution.

All transitions and program changes require clear, consistent messaging to customers. The tact Consolidated takes with public education and outreach is the same it takes with all facets of operations: practical and effective.

Key to program success is breaking information down into practical and digestible chunks—presented simply and colorfully, and simultaneously providing customers with motivating reasons for cultivating new recycling behaviors. It is also important to point the way to additional resources and information for those who may be interested, which Consolidated will accomplish through links to resources posted on its website, and through distribution of general environmental content distributed at events and through presentations.

Consolidated suggests the following collateral materials be produced for this program.

### Proposed Outreach Theme – Curb It

In the City of Bell, Consolidated is proposing to introduce, through a variety of advertising mediums, a program called Curb It. Curb It is a program designed for keeping trash rates low, conserving natural resources and making the City of Bell more sustainable community. Sample materials are provided in *Exhibits* of this proposal.



*The tact Consolidated takes with public education and outreach is the same it takes with all facets of operations: practical and effective. People are generally inundated with information and heavily burdened with responsibilities.*



establish the new billing procedures, explain the billing format, clearly describe the customer's responsibilities, and provide full customer service contact information—including a toll-free customer service number. All materials will be produced in English and Spanish.

- **Quarterly Annual Newsletters**

Consolidated currently provides quarterly newsletters entitled *Keeping it Clean and Green in Bell*. As a program enhancement in the City of Bell, Consolidated will continue to provide these quarterly rather than twice yearly as specified in the draft Agreement. A sample is provided in *Exhibits*.

- **Corrective Action Notice (Oops Tag)**

*Corrective Action Notices* are tags that drivers leave that indicate set-out problems, and are tailored to residential and commercial generator types. These tags can be used as a courtesy notice, or as a notice of non-collection when so marked. When used as a courtesy notice, the materials in question are taken, but customers are informed of the improper element of their set-out and advised of what to do to ensure a proper set-out for next collection. When used as a non-collection notice, the cart in question is not collected, and the customer is advised of the exact problem. The problem must be corrected prior to the following week's service. Use of *Oops Tags* are an important component of developing good recycling behavior amongst customers.

Consolidated's *Corrective Action Notice*, or *Oops Tag*, will be utilized in one of two ways, depending upon City of Bell preference. The tag can be utilized regularly by drivers, whenever improper set-outs are observed, or it may be used as part of a campaign, where, for example, one route will be focused on per month, and *Corrective Action Notices* issued during collections in that month. The one exception to limited *Corrective Action Notice* distribution via campaign would be in cases where serious or unacceptable, recurring set-out problems by a particular customer or household are observed by the route driver.

Naturally, *Corrective Action Notices* will be used whenever a collection is unacceptable for health and safety reasons or due to an unpermissible level of contamination is observed in either the recyclables or green waste cart, which warrants the attention of the customer to clean up the materials or have the materials disposed of as MSW. When drivers turn in their *Corrective Action Notices*, the information is input into a database, and used for detecting behavioral patterns or trends that need correcting via Consolidated's public education and outreach program.



## Commercial Program Campaign Components

Commercial generators are more receptive to recycling programs when two elements are present: a) the opportunity to save money; and b) when the program is easy to use, such that staff time to manage waste is minimal. Knowing this, Consolidated auditors will emphasize these points during Consolidated's initial recycling opportunity assessments. Outreach materials will be combined in a manner that addresses customer need, and submitted to customers during the audit process or in a subsequent mailing. Materials will be mailed if personal contact cannot be made between Consolidated auditors and business managers during the initial assessment process.

- **Informational Flyers**

Consolidated will develop a new set of informational flyers, one each addressing the following business types: a) retail; b) business office; c) restaurant and bar; and d) manufacturing. Each flyer will highlight recycling opportunities for the applicable business type, and will discuss program logistics—both for refuse and recyclable materials. Also, a specific flyer will be developed for roll-off customers that details recycling options, debris box sizes and the like.

- **Service Agreement and Rate Matrix**

A standard service agreement will be provided to Bell businesses. A rate matrix will be developed depicting the published rates for commercial refuse and recycling based on container size and frequency of service. During the initial recycling opportunity assessment period, garbage and recycling options will be presented, with heavy emphasis on recycling.

- **Container Labels**

FEL bins or commercial carts will be labeled in the same manner described above.

- **Recycling Workshops**

As mentioned in *Multi-Family Program Components*, above, recycling workshops will be offered to those businesses with a need for or that request such a service.

- **Miscellaneous Collateral Materials**

It has been Consolidated's experience that often a particular business may need specialized outreach materials, such as information flyers to post in lunch rooms, or directives to send to each employee. The Company is committed to developing such materials, as requested by customers on a case-by-case basis. Generally, if it is within the Company's power to produce an item that will make recycling programs success, Consolidated will produce and deliver that item to its customer.

## Commercial/MFD Recycling Technical Assistance

Consolidated will provide education, outreach, training, follow-up, troubleshooting, monitoring, data collection, and program evaluation services for commercial, institutional, and multi-family customers. Providing such services on the premises of customers is referred to as *recycling technical assistance*. All customers will receive an initial assessment, and larger generators and commercial customers that request it will also receive the more intense, recycling technical assistance described herein annually. Again, this will ensure the City is in full compliance with AB 32, AB 341, and AB 818.



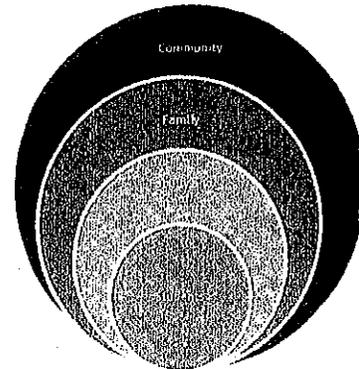
- Evaluate and present options for recovering or substituting difficult-to-recycle, compost, or reuse materials, such as identifying opportunities to use compostable or recyclable food service ware or packaging.
- Develop outreach materials about waste reduction and recycling: distribute such materials when meeting with customers.
- Assist in gaining management support and dedication of staff resources from customers for program implementation.
- Identify and promote other program or recognition opportunities such as potential Green Business certification, toxics reduction, green building, green purchasing, energy efficiency, water conservation, local and regional awards, and other programs if applicable and requested.
- Other tasks as requested by customers and/or the City.

## Schools Education Program

As part of the Los Angeles Unified School District, Bell schools will benefit from Consolidated's recent LAUSD contract award and our partnership with Grades of Green, a non-profit award-winning environmental education non-profit organization whose mission is "to inspire and empower students and the broader school community to care for the environment. The following information outlined the Grades of Green approach and provides some detail as to what the City can expect through this Consolidated – Grades of Green partnership as administered through the LAUSD.

### Enroll and Involve the Entire Community in Becoming Great Recyclers

The entire community receives specialized education based on that particular group's role in promoting recycling. Solid waste and recycling management must be practiced by everyone, not simply the janitor, to achieve excellent results, such as clean loads of recyclable material and superior diversion. Additional outcomes include spillover behaviors, where students, faculty, and staff bring their newly learned recycling behaviors home, resulting in higher, sustainable diversion overall. Republic will engage School District administrators, faculty, staff, and students in its efforts to conduct a successful recycling program. Consolidated will include the following elements when addressing the education and training needs of each community member.



The education program consists of five initiatives, supported by various tools and activities, that help schools implement conservation practices and promote environmental awareness: 1) The Green Shake, using education to create needed change; 2) Trash Redux, to reduce the amount of trash that goes into our landfills; 3) Walk the Walk, to reduce harmful emissions; 4) R3, to advocate for reducing, re-using, and recycling resources such as water, electricity, and paper, as well as reducing chemical use; and 5) Operation GreenNation, to empower kids to learn how to make an impact at a national and global level.



## Good Corporate Citizenship and Proposal Enhancements

### Good Corporate Citizenship

Consolidated is made up of caring, vibrant people making a difference in the communities they serve every day. Consolidated contributes to its communities in several ways: through sponsorships, clean-up assistance/event participation, educational activities, neighborhood and civic group involvement, and environmental contributions. The City's RFP places significant importance on the value of good corporate citizenship and Consolidated has throughout the term of the existing *Agreement* dedicated itself to being an involved, good corporate citizen in Bell. The City can expect these efforts to not only continue but to increase under the terms of the new *Agreement*.

Consolidated *has*, for over 15 years, provided a high level of corporate citizenship to the City of Bell. As indicated in the *RFP's Attachment F – Good Corporate Citizenship Statement*, Consolidated also commits to the following:

- Demonstrate good corporate citizenship through employment practices.
- Consolidated will actively recruit Bell residents for open positions.
- As indicated in *Section 9*, Consolidated has extensive personnel policies in place to provide training and promotion opportunities for all workers, as well as provide adequate wages, family-friendly benefits, and a healthy work environment.
- Demonstrate good corporate citizenship through environmental responsibility.
- Consolidated will use Bell sources for goods and services it needs.
- Consolidated walks its talk through efficient use of resources, the procurement of recycled products, use of alternative fuel vehicles, internal recycling.
- Consolidated will continue to look for ways to become more efficient, such as greater facilitation of employee carpools and rideshare.
- Being a good corporate citizen through the provision of excellent customer service.
- Please see *Section 11 – Customer Service*. Consolidated continues to dedicate itself to providing world class customer service.
- Consolidated will continue to sponsor and participate in Bell events, activities, and worthy causes as it has for over 15 years.

Consolidated managers and staff are charged with actively seeking out opportunities to provide assistance to civic and community groups and organizations through responding to requests for financial, planning and logistics support for activities, events and infrastructure development. Provided below is just a sampling of Consolidated's involvement in Bell.

- Members of Chamber of Commerce since 1995
- Members of Friends of Bell since 1999
- Supporters of Friends of Bell foundation since 1999
- Sponsored various events for distributions, and food baskets for needy families
- *Annual Sponsor of a Bell Chamber of Commerce mixer*
- Introduced the *Bell Recycles* program in 1999
- Implemented a schools recycling program – including a recycling poster contest



### **Compost Giveaways**

Consolidated will host compost giveaway events for Bell residents and to demonstrate closing the loop, Consolidated will provide bulk or bagged compost for community and school gardens upon request. Consolidated will also provide educational materials and composting workshops.

### **Disaster Response**

Bell will continue to receive the full support of Republic Services in case a natural disaster strikes and a major clean-up response is needed. Republic has developed a sophisticated response plan including and intimate working knowledge of FEMA administrative processes that, together with Republic's tremendous financial and capital assets will provide an unmatched level of response in case of an unforeseen emergency strikes. Republic's disaster response plan has been finely tuned through the many natural disasters that has stricken our nation in recent years.

### **School Sports and Youth Organizations**

Consolidated will continue to sponsor youth athletics and organizations through generous sponsorships as well as providing free service---whatever the need may be.

### **Neighborhood Safety**

Consolidated will bring it's crime prevention and safety watch program, entitled *We're Looking Out For You*, to Bell. The program enlists the active participation of Consolidated collection personnel in cooperation with law enforcement and emergency services to reduce crime and maintain neighborhood safety.

### **Facility Tours**

Consolidated will offer and promote free educational tours of any of its local facilities to community and school groups. The company recently unveiled its new education centers at Sunshine Canyon Landfill and at its state of the art materials processing center in Anaheim.

In conclusion, Consolidated has, for over 15 years, acted as a good corporate citizen in Bell and has prided itself on the relationships established with civic and community groups as well as individual customers over this period of time. The City of Bell, its residents, and businesses can rely upon the fact that Consolidated will continue to be a corporate citizen the City can rely upon.

# 7

## Maximum Rates

### Attachments

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Enclosed in this section are the following Maximum Permitted Rate Schedules:

- Attachment C-1: Residential Service
- Attachment C-2: Commercial Service
- Attachment C-3: Multi-Family Service
- Attachment C-4: Temporary Bin/Box Service

## Attachment C-1 - Total Maximum Permitted Rate Schedule

### Residential Services

Fill in the rates below for each level of service. Rates must show the total cost in each category. Rates listed will be in accordance with Section 7 "Maximum Rates" of the RFP.

Each contractor is responsible for completing this form.

#### Standard Residential Service - 3 Cart Automated System (Refuse, Recycling, Green Waste)

	Monthly Fee	Quarterly Fee
95 - Gallon Refuse (Cart)		
64 - Gallon Recyclable (Cart)		
64 - Gallon Green Waste (Cart)	<u>\$13.75</u>	<u>\$41.25</u>
Discounted Residue Cart (64-gallon) (Reduction in Rate)	<u>&lt;\$ 1.00 &gt;</u>	<u>&lt;\$ 3.00 &gt;</u>
Senior/Handicap Discount Services (Optional) (Reduction in Rate)	<u>&lt;\$ 1.00 &gt;</u>	<u>&lt;\$ 3.00 &gt;</u>
Friday Collection Premium (if any) Same as Standard Rate Above (no premium)	<u>\$13.75</u>	<u>\$41.25</u>
<i>(Additional recycling and green waste containers must be supplied to residents free of charge if requested.)</i>		

	Monthly Fee	Quarterly Fee
Additional 95 - Gallon Refuse Container (Cart)	<u>\$ 4.50</u>	<u>\$13.50</u>

	Monthly Fee	Quarterly Fee
Backyard Service (Optional) (In addition to regular service rate)	<u>\$ 3.45</u>	<u>\$10.35</u>
On-call bulky pick-up fee (per pick-up)	<u>\$25.00</u>	
Percentage fee adjustment (if any) for the right to request that delinquent accounts be placed by the City on the tax roll once per year	<u>5%</u>	

**Attachment C-2 - Total Maximum Permitted Rate Schedule**

**Commercial Service**

Fill in the rates in the below boxes for each level of service. Rates must show the total cost for each category. See Section 7 of the RFP.

CONTAINER TYPE/SIZE	Standard Commercial Service					ADDITIONAL PICKUPS (SAME DAY)
	1	2	3	4	5	
95 Gallon Containers	\$45.69 per cont.	\$76.15 per cont.	\$106.62 per cont.	\$137.08 per cont.	\$167.55 per cont.	
2 Cubic Yard Bin	\$114.30	\$190.42	\$266.62	N/A	N/A	\$25.00
3 Cubic Yard Bin	\$137.07	\$213.27	\$289.52	\$365.71	\$441.85	\$25.00
Compacting 3 Cubic Yard Bin	\$219.31	\$341.23	\$463.23	\$585.14	\$706.96	\$25.00
Compacting 30 Cubic Yard Box	\$593.82 w/9 tons					
Standard 40 Cubic Yard Box	\$473.31 w/7 tons					
Recycling 3 Cubic Yard Bin (Co-Mingled)	\$54.83	\$85.31	\$115.81	N/A	N/A	N/A
Recycling 40 Cubic Yard Box (Co-Mingled)	\$331.32					

**Attachment C-3 - Total Maximum Permitted Rate Schedule**

**Multi-Family Services**

Fill in the rates in the below boxes for each level of service. Rates must show the total cost for each category. See Section 7C of the RFP.

CONTAINER TYPE/SIZE.	Standard Multi-Family Services					ADDITIONAL PICKUPS (SAME DAY)
	1	2	3	4	5	
95 Gallon Containers	\$ 27.50 per cont.	\$ 55.00 per cont.	\$ 82.50 per cont.	\$110.00 per cont.	\$137.50 per cont.	\$15.00 per cont.
2 Cubic Yard Bin	\$114.30	\$190.42	\$266.62	N/A	N/A	\$25.00
3 Cubic Yard Bin	\$137.07	\$213.27	\$289.52	\$365.71	\$441.85	\$25.00
Recycling 3 Cubic Yard Bin (Mixed)	\$ 54.83	\$ 85.31	\$115.81	N/A	N/A	N/A



Addendum #1 to the City of Bell RFP

As cited in the proposed franchise agreement (Article VIII) for solid waste and recycling service, all franchise rates in the City of Bell will consist of two major components: collection and disposal. In responding to this RFP bidders are required to show the following sub-component costs for each rate type\* at a once per week service level. This was a specific request of the City Council. Use the table below as a model for your bid.

SERVICE TYPE:

Labor	_____	
Vehicle **	_____	Behind this page
Container/Bins	_____	
Overhead/Profit/Fees	_____	
Collection Component Total	_____	

Processing	_____	
Transfer	_____	Behind this page
Landfill or End User***	_____	
Disposal Component Total****	_____	

Total Rate \_\_\_\_\_ Behind this page

\*Rate types include trash, recycling, and green waste service for residential/multi-family cart, multi-family bin, commercial bin, recurring compactor, recurring roll-off, temporary bin, and temporary roll-off.

\*\*Vehicle sub-component includes fuel, maintenance and purchase price

\*\*\*Rate for green waste and recycling will substitute an "end user" facility cost for landfill cost, where applicable.

\*\*\*\*Disposal Component must also be calculated and listed as a total per ton fee.

*Once a week service only*

# Addendum #1 to the City of Bell RFP

Service Type	Residential	Commercial	Roll Off
Labor	\$ 4.23	\$ 11.21	\$ 65.44
Vehicle	\$ 2.56	\$ 8.75	\$ 41.79
Container/Bins	\$ -	\$ 1.40	\$ 2.82
Overhead/Profit/Fees	\$ 1.40	\$ 79.17	\$ 43.21
Collection Component Total	\$ 8.19	\$ 100.53	\$ 153.26
Processing	\$ 3.87	\$ 36.54	\$ 320.05
Transfer	\$ 1.69	\$ -	\$ -
Landfill	\$ -	\$ -	\$ -
Disposal Component Total	\$ 5.56	\$ 36.54	\$ 320.05
Total Rate	\$ 13.75	\$ 137.07	\$ 473.31

## **Attachment D – Good Corporate Citizen Statement**

### **SOLID WASTE AND RECYCLING HAULER STATEMENT OF GOOD CITIZENSHIP**

#### Good corporate citizens enhance Bell through employment practices:

- Hire Bell residents when possible
- Provide training and promotion opportunities for all workers
- Provide adequate wages and benefits
- Provide safe, clean, and healthy work environment
- Provide family friendly benefits that support family life such as maternity/paternity leave, child care and day care

#### Good corporate citizens enhance Bell through environmental responsibility:

- Use Bell sources for goods
- Minimize use of resources
- Used recycled content products wherever possible
- Use energy efficient systems
- Support opportunities for employees to use car pools/public transportation

#### Good corporate citizens enhance Bell through excellent customer service practices:

- Being responsive to Bell residents complaints
- Being courteous and helpful
- Being bi-lingual
- Extending a helping hand to the seniors and handicapped

#### Good corporate citizens enhance Bell through financial practice:

- Purchase supplies locally
- Support Bell's youth teams, community organizations.
- Support volunteerism and community involvement by employees
- Support and participate in Bell community events

Renewable Performance Bond

Bond Number: 929545965

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, **Consolidated Disposal Service, LLC**, (hereinafter called the Principal), as Principal, and **Western Surety Company**, duly organized under the laws of the State of **SD**, (hereinafter called the Surety), as Surety, are held and firmly bound unto **City of Bell**, (hereinafter called the Obligee), in the sum of **One Million Dollars and 00/10 (\$1,000,000)** Dollars, for the payment of which sum well and truly to be made, we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns.

WHEREAS, said Principal has entered into a written Contract with said Obligee, dated 7/1/2012 for **Comprehensive Solid Waste Service**, in accordance with the terms and conditions of said Contract, which is hereby referred to and made a part hereof as if fully set forth herein:

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That if the above bounden Principal shall well and truly keep, do and perform each and every, all and singular, the matters and things in said contract set forth and specified to be by said Principal kept, done and performed, at the times and in the manner in said contract specified, or shall pay over, make good and reimburse to the above named Obligee, all loss and damage which said Obligee may sustain by reason of failure or default on the part of said Principal so to do, then this obligation shall be null and void; otherwise shall remain in full force and effect.

FURTHERMORE, Notwithstanding the provisions of the Contract, the term of this bond shall apply from **July 1, 2012**, until **June 30, 2013**, and may be extended by the Surety by Continuation Certificate. However, neither non-renewal by the Surety, nor the failure or inability of the Principal to file a replacement bond in the event of non-renewal, shall itself constitute a loss to the obligee recoverable under this bond or any renewal or continuation thereof. The liability of the Surety under this bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in this bond or in any additions, riders, or endorsements properly issued by the Surety as supplements thereto. In no event shall Surety's aggregate liability exceed the penal sum of this bond.

NO SUIT, ACTION OR PROCEEDING by the Obligee to recover on this bond shall be sustained unless the same be commenced within two (2) years following the date on which Principal ceased work on said Contract.

Signed and sealed this 1<sup>st</sup> day of July, 2012.

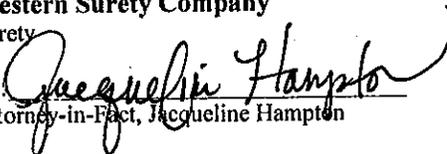
**Consolidated Disposal Service, LLC**

Principal

By:   
Johanne S. Puckett, Attorney-in-Fact

**Western Surety Company**

Surety

By:   
Attorney-in-Fact, Jacqueline Hampton



# Western Surety Company

## POWER OF ATTORNEY APPOINTING INDIVIDUAL ATTORNEY-IN-FACT

Know All Men By These Presents, That WESTERN SURETY COMPANY, a South Dakota corporation, is a duly organized and existing corporation having its principal office in the City of Sioux Falls, and State of South Dakota, and that it does by virtue of the signature and seal herein affixed hereby make, constitute and appoint

**Johanne S Puckett, Jacqueline Hampton, Individually**

of Greenville, SC, its true and lawful Attorney(s)-in-Fact with full power and authority hereby conferred to sign, seal and execute for and on its behalf bonds, undertakings and other obligatory instruments of similar nature

**- In Unlimited Amounts -**

and to bind it thereby as fully and to the same extent as if such instruments were signed by a duly authorized officer of the corporation and all the acts of said Attorney, pursuant to the authority hereby given, are hereby ratified and confirmed.

This Power of Attorney is made and executed pursuant to and by authority of the By-Law printed on the reverse hereof, duly adopted, as indicated, by the shareholders of the corporation.

In Witness Whereof, WESTERN SURETY COMPANY has caused these presents to be signed by its Senior Vice President and its corporate seal to be hereto affixed on this 24th day of February, 2012.



WESTERN SURETY COMPANY

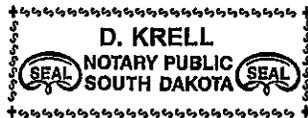
Paul T. Bruflat, Senior Vice President

State of South Dakota }  
County of Minnehaha } ss

On this 24th day of February, 2012, before me personally came Paul T. Bruflat, to me known, who, being by me duly sworn, did depose and say: that he resides in the City of Sioux Falls, State of South Dakota; that he is the Senior Vice President of WESTERN SURETY COMPANY described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed pursuant to authority given by the Board of Directors of said corporation and that he signed his name thereto pursuant to like authority, and acknowledges same to be the act and deed of said corporation.

My commission expires

November 30, 2012



D. Krell, Notary Public

### CERTIFICATE

I, L. Nelson, Assistant Secretary of WESTERN SURETY COMPANY do hereby certify that the Power of Attorney hereinabove set forth is still in force, and further certify that the By-Law of the corporation printed on the reverse hereof is still in force. In testimony whereof I have hereunto subscribed my name and affixed the seal of the said corporation this 1st day of July, 2012.



WESTERN SURETY COMPANY

L. Nelson, Assistant Secretary

**Authorizing By-Law**

**ADOPTED BY THE SHAREHOLDERS OF WESTERN SURETY COMPANY**

This Power of Attorney is made and executed pursuant to and by authority of the following By-Law duly adopted by the shareholders of the Company.

Section 7. All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile.

POWER OF ATTORNEY

Republic Services, Inc., a Delaware corporation and having its chief place of business at 18500 N. Allied Way, Phoenix, Arizona 85054, hereby makes, constitutes and appoints WELLS FARGO INSURANCE SERVICES USA, INC., acting through and by any of Johanne S. Puckett and/or Sarabeth Scott, its true and lawful attorney and affix its corporate seal to and deliver for and on behalf as surety thereon or otherwise, bonds of any of the following classes, to wit:

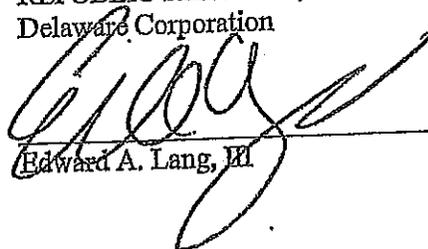
1. Surety bonds and/or bid bonds to the United States of American or agency thereof, including those required or permitted under the laws or regulations relating to Customs or Internal Revenue; license and permit bonds or other indemnity bonds under the laws, ordinances or regulations of any state, city, town, village, board, other body organization, public or private; bonds to transportation companies; lost instrument bonds; lease bonds; worker's compensation bonds; miscellaneous surety bonds; and bonds on behalf of notaries public; sheriffs, deputy sheriffs and similar public officials.

2. Surety bonds and/or bid bonds on behalf of REPUBLIC SERVICES, INC. and its subsidiaries in connection with bids, proposals or contracts.

To sign and seal all bid bonds and surety bonds at or below the monetary threshold of Five Million Dollars (\$5,000,000.00) on behalf of REPUBLIC SERVICES, INC. and its subsidiaries, relating to the provision of solid waste collection, transportation, recycling or disposal services by REPUBLIC SERVICES, INC. and its subsidiaries. REPUBLIC SERVICES, INC. hereby agrees to ratify and confirm whatsoever WELLS FARGO INSURANCE SERVICES USA, INC. shall lawfully do pursuant to this power of attorney and the Client Service Agreement dated October 15, 2008 between WELLS FARGO INSURANCE SERVICES USA, INC. and REPUBLIC SERVICES, INC. and until notice or revocation has been given by REPUBLIC SERVICES, INC. the acts of said attorney shall be binding on the undersigned.

IN WITNESS WHEREOF, this Power of Attorney has been signed this 29th day of July, 2011, on behalf of REPUBLIC SERVICES, INC. by its Senior Vice President and Treasurer, Edward A. Lang, III

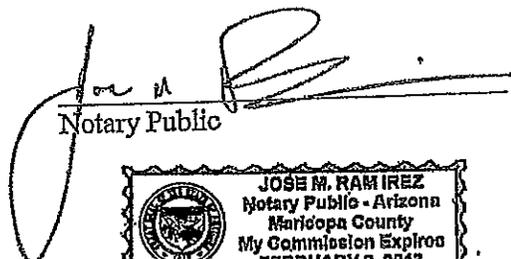
REPUBLIC SERVICES, INC., a  
Delaware Corporation

  
Edward A. Lang, III

STATE OF ARIZONA

COUNTY OF MARICOPA

Subscribed and sworn to before me this 29th day of July, 2011 by Edward A. Lang, III Senior Vice President and Treasurer of Republic Services, Inc.

  
Notary Public

